

**EN BANC**

**[ G.R. No. 216776, April 19, 2016 ]**

**PHILIPPINE CHARITY SWEEPSTAKES OFFICE (PCSO),  
PETITIONER, VS. CHAIRPERSON MA. GRACIA M. PULIDO-TAN,  
COMMISSIONER HEIDI L. MENDOZA, COMMISSIONER ROWENA  
V. GUANZON, THE COMMISSIONERS, COMMISSION ON AUDIT  
(COA), RESPONDENTS.**

**D E C I S I O N****PERALTA, J.:**

This petition for *certiorari* under Rule 64, in relation to Rule 65, of the Rules of Court (*Rules*) seeks to annul and set aside the June 5, 2014 Decision<sup>[1]</sup> and December 22, 2014 Resolution<sup>[2]</sup> of the Commission on Audit (COA) Commission Proper, which affirmed the notice of disallowance on the cost of living allowance received by the officials and employees of the Philippine Charity Sweepstakes Office-Nueva Ecija Provincial District Office in 2010.

Created by Republic Act (R.A.) No. 1169,<sup>[3]</sup> as amended by Presidential Decree (P.O.) No. 1157<sup>[4]</sup> and Batas Pambansa (B.P.) Blg. 42,<sup>[5]</sup> the Philippine Charity Sweepstakes Office (PCSO) is the principal government agency for raising and providing funds for health programs, medical assistance and services, and charities of national character. On March 4, 2008, the PCSO Board of Directors, through Resolution No. 135, approved the payment of monthly cost of living allowance (COLA) to its officials and employees for a period of three (3) years in accordance with the Collective Negotiation Agreement. Pursuant thereto, in 2010, the PCSO released the sum of P381,545.43 to all qualified officials and employees of its Nueva Ecija Provincial District Office. A year after, on March 19, 2011, Executive Secretary Paquito N. Ochoa, Jr. confirmed the benefits and incentives provided for in Resolution No. 135, but with a directive to the PCSO to strictly abide by Executive Order (E.O.) No. 7 that imposed a moratorium on any grant of new or increase in the salaries and incentives until specifically authorized by the President.<sup>[6]</sup>

On post audit, the Team Leader and Supervising Auditor of the PCSO-Nueva Ecija Provincial District Office issued Notice of Disallowance (ND) 11-001-101-(10)<sup>[7]</sup> dated May 16, 2011 invalidating the payment of P381,545.43 on the grounds that it is contrary to the Department of Budget and Management (DBM) Circular No. 2001-03 dated November 12, 2001 and it amounts to double compensation that is prohibited under the 1987 Constitution. Those found liable for the disallowed disbursement were:

<b>Name</b>	<b>Position/ Designation</b>	<b>Nature of Participation in the Transaction</b>
1. Josefina A. Sarsonas	Department Manager	Approving Officer

2. Francis S. Manalad	CLOO	Recommending Approval
3. Alberto B. Pertinente	Acting Auditor	
5. Mary Ann T. Baltazar	Acting SLOO	Certifies Cash Available
6. Moriel C. Blanco	Cashier II	Issued Check <sup>[8]</sup>

The PCSO appealed, but the COA Regional Director affirmed the disallowance in a Decision<sup>[9]</sup> dated September 6, 2012. Similarly, the COA Commission Proper denied the petition for review and motion for reconsideration of PCSO. Hence, this petition contending that:

1. The PCSO Board of Directors is authorized under Sections 6 and 9 of R.A. No. 1169, as amended, to fix salaries and to determine allowances, bonuses, and other incentives of its officers and employees;
2. Executive Secretary Ochoa, Jr. approved the grant of benefits and incentives previously given to the PCSO officials and employees and such *post facto* approval/ratification by the Office of the President is enshrined in Article VII Section 17 of the 1987 Constitution in relation to Book III Section 1 of the Administrative Code of 1987 as well as recognized by the Supreme Court in *Cruz v. Commission on Audit*<sup>[10]</sup> and *GSIS v. Commission on Audit*<sup>[11]</sup>
3. The disallowance of COLA violates the principle of non-diminution of benefits because the PCSO officials and employees already acquired vested rights over the same for having been a part of their compensation for a considerable length of time; and
4. The recipients of the disallowed amounts need not return the COLA received since they are in good faith for lack of knowledge at the time that the same lacked legal basis.

During the pendency of the case, the COA issued an Order of Execution<sup>[12]</sup> dated July 3, 2015 directing to withhold the payment of salaries or any amount due the five above-named officials as settlement of their liabilities. Arguing that these employees were discriminated against and were denied due process, the PCSO filed a Petition for the Issuance of Temporary Restraining Order (TRO).<sup>[13]</sup> On August 25, 2015, the Court merely noted the prayer for TRO.

The petition is denied. No grave abuse of discretion amounting to lack or excess of jurisdiction could be attributed to the COA.

### **Authority of the PCSO**

The PCSO stresses that it is a self-sustaining government instrumentality which generates its own fund to support its operations and does not depend on the national government for its budgetary support. Thus, it enjoys certain latitude to establish and grant allowances and incentives to its officers and employees.

We do not agree. Sections 6 and 9 of R.A. No. 1169, as amended, cannot be relied

upon by the PCSO to grant the COLA. Section 6 merely states, among others, that fifteen percent (15%) of the net receipts from the sale of sweepstakes tickets (whether for sweepstakes races, lotteries, or other similar activities) shall be set aside as contributions to the operating expenses and capital expenditures of the PCSO. Also, Section 9 loosely provides that among the powers and functions of the PCSO Board of Directors is "to fix the salaries and determine the reasonable allowances, bonuses and other incentives of its officers and employees as may be recommended by the General Manager x x x **subject to pertinent civil service and compensation laws.**" The PCSO charter evidently does not grant its Bioard the unbridled authority to set salaries and allowances of officials and employees. On the contrary, as a government owned and/or controlled corporation (GOCC), it was expressly covered by P.D. No. 985 or "*The Budgetary Reform Decree on Compensation and Position Classification of 1976,*" and its 1978 amendment, P.D. No. 1597 {*Further Rationalizing the System of Compensation and Position Classification in the National Government*), and mandated to comply with the rules of then Office of Compensation and Position Classification (OCPC) under the DBM. [14]

Even if it is assumed that there is an explicit provision exempting the PCSO from the OCPC rules, the power of the Board to fix the salaries and determine the reasonable allowances, bonuses and other incentives was still subject to the DBM review. In *Intia, Jr. v. COA*, [15] the Court stressed that the discretion of the Board of Philippine Postal Corporation on the matter of personnel compensation is not absolute as the same must be exercised in accordance with the standard laid down by law, *i.e.*, its compensation system, including the allowances granted by the Board, must strictly conform with that provided for other government agencies under R.A. No. 6758 [16] in relation to the General Appropriations Act. To ensure such compliance, the resolutions of the Board affecting such matters should first be reviewed and approved by the DBM pursuant to Section 6 of P.D. No. 1597. Following *Intia, Jr.*, We subsequently ruled in *Phil. Retirement Authority (PRA) v. Buñag*: [17]

In accordance with the ruling of this Court in *Intia*, we agree with petitioner PRA that these provisions should be read together with P.D. No. 985 and P.D. No. 1597, particularly Section 6 of P.D. No. 1597. Thus, notwithstanding exemptions from the authority of the Office of Compensation and Position Classification granted to PRA under its charter, PRA is still required to 1) observe the policies and guidelines issued by the President with respect to position classification, salary rates, levels of allowances, project and other honoraria, overtime rates, and other forms of compensation and fringe benefits and 2) report to the President, through the Budget Commission, on their position classification and compensation plans, policies, rates and other related details following such specifications as may be prescribed by the President.

Despite the power granted to the Board of Directors of PRA to establish and fix a compensation and benefits scheme for its employees, the same is subject to the review of the Department of Budget and Management. However, in view of the express powers granted to PRA under its charter, the extent of the review authority of the Department of Budget and Management is limited. As stated in *Intia*, the task of the Department of

Budget and Management is simply to review the compensation and benefits plan of the government agency or entity concerned and determine if the same complies with the prescribed policies and guidelines issued in this regard. The role of the Department of Budget and Management is supervisory in nature, its main duty being to ascertain that the proposed compensation, benefits and other incentives to be given to PRA officials and employees adhere to the policies and guidelines issued in accordance with applicable laws.

The rationale for the review authority of the Department of Budget and Management is obvious. Even prior to R.A. No. 6758, the declared policy of the national government is to provide "equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions." To implement this policy, P.D. No. 985 provided for the standardized compensation of government employees and officials, including those in government-owned and controlled corporations. Subsequently, P.D. No. 1597 was enacted prescribing the duties to be followed by agencies and offices exempt from coverage of the rules and regulations of the Office of Compensation and Position Classification. The intention, therefore, was to provide a compensation standardization scheme such that notwithstanding any exemptions from the coverage of the Office of Compensation and Position Classification, the exempt government entity or office is still required to observe the policies and guidelines issued by the President and to submit a report to the Budget Commission on matters concerning position classification and compensation plans, policies, rates and other related details. This ought to be the interpretation if the avowed policy of compensation standardization in government is to be given full effect. The policy of "equal pay for substantially equal work" will be an empty directive if government entities exempt from the coverage of the Office of Compensation and Position Classification may freely impose any type of salary scheme, benefit or monetary incentive to its employees in any amount, without regard to the compensation plan implemented in the other government agencies or entities. Thus, even prior to the passage of R.A. No. 6758, consistent with the salary standardization laws in effect, the compensation and benefits scheme of PRA is subject to the review of the Department of Budget and Management.<sup>[18]</sup>

Upon the effectivity of R.A. No. 6758, GOCCs like the PCSO are included in the Compensation and Position Classification System because Section 16 of the law repeals all laws, decrees, executive orders, corporate charters, and other issuances or parts thereof, that exempt agencies from the coverage of the System, or that authorize and fix position classification, salaries, pay rates or allowances of specified positions, or groups of officials and employees or of agencies, which are inconsistent with the System, including the *proviso* under Section 2 and Section 16 of P.D. No. 985.<sup>[19]</sup>

At present, R.A. No. 10149, or the *GOCC Governance Act of 2011*,<sup>[20]</sup> which was approved on June 6, 2011, is the latest pertinent law. It declares the policy of the

State to ensure, among others, that reasonable, justifiable and appropriate remuneration schemes are adopted for the directors/trustees, officers and employees of GOCCs and their subsidiaries to prevent or deter the granting of unconscionable and excessive remuneration packages.<sup>[21]</sup> Relative to the purposes of the law, the Governance Commission for Government-Owned or -Controlled Corporations (GCG) was created to act as the central advisory, monitoring, and oversight body that is attached to the Office of the President. Among its powers and functions is to conduct compensation studies, develop and recommend to the President a competitive compensation and remuneration system which shall attract and retain talent but allow the GOCC to be financially sound and sustainable.<sup>[22]</sup> After the conduct of a compensation study, the GCG is tasked to develop a Compensation and Position Classification System (CPCS) applicable to all officers and employees of the GOCCs, whether under the Salary Standardization Law or exempt therefrom, subject to approval of the President.<sup>[23]</sup> R.A. No. 10149 unequivocally states that, any law to the contrary notwithstanding, no GOCC shall be exempt from the coverage of the CPCS.<sup>[24]</sup>

On March 22, 2016, President Benigno Simeon C. Aquino III issued E.O No. 203<sup>[25]</sup> approving the CPCS and the Index of Occupational Services (IOS) Framework for the GOCC Sector that was developed by the GCG. The E.O. provides, among others, that while recognizing the constitutional right of workers to self-organization, collective bargaining and negotiations, the Governing Boards of all covered GOCCs, whether Chartered or Non-chartered, may not negotiate with their officers and employees the economic terms of their CBAs.<sup>[26]</sup> Likewise, the E.O. restates the provision of R.A. No. 10149 that the GCG may recommend for the President's approval incentives outside of the CPCS for certain position titles in consideration of the good performance of the GOCC provided that the GOCC has fully paid all taxes for which it is liable, and it has declared and paid all the dividends required to be paid under its charter or any other law.<sup>[27]</sup>

### ***COLA as allowance***

To determine whether the COLA is considered as an allowance that is excluded from the standardized salary rates of the PCSO officials and employees, reference must be made to the first paragraph of Section 12 of R.A.No. 6758. It states:

SEC. 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, x x x"

Based on the above-quoted, all kinds of allowances are integrated into the