

## SECOND DIVISION

[ G.R. No. 169726, March 18, 2010 ]

**DEPARTMENT OF BUDGET AND MANAGEMENT, REPRESENTED BY.  
SEC. EMILIA T. BONCODIN, PETITIONER, VS. OLIVIA D. LEONES,  
RESPONDENT.**

### **D E C I S I O N**

**CARPIO, J.:**

#### **The Case.**

This resolves the petition for review<sup>[1]</sup> of the Decision<sup>[2]</sup> of the Court of Appeals finding respondent Olivia D. Leones entitled to representation and transportation allowance.

#### **The Facts**

Before 1996, respondent Olivia D. Leones (respondent) was the Municipal Treasurer of Bacnotan, La Union. In December 1996, respondent was reassigned to the Office of the Provincial Treasurer, La Union, pending resolution of administrative cases filed against her.<sup>[3]</sup> As Municipal Treasurer, respondent received, on top of her salary, representation and transportation allowance (RATA). The Municipality of Bacnotan stopped paying RATA to respondent upon her reassignment to the Provincial Government.

After unsuccessfully obtaining administrative relief,<sup>[4]</sup> respondent filed a mandamus suit with the Regional Trial Court of San Fernando City, La Union (trial court) against petitioner Department of Budget and Management (DBM) and then mayor of Bacnotan, Ma. Minda Fontanilla (Fontanilla), to compel payment of RATA. The trial court dismissed the petition for non-exhaustion of administrative remedies. On appeal by respondent,<sup>[5]</sup> the Court of Appeals affirmed the dismissal. As respondent no longer pursued the case, the trial court's ruling became final on 30 June 2003.

However, respondent again sought an opinion, this time from the DBM Secretary, on her entitlement to RATA. In its reply dated 3 September 2003 (Opinion), the DBM found respondent entitled to RATA only for 1999 under the General Appropriation Act (GAA) for that year which, unlike previous and succeeding years, did not require "actual performance of x x x functions" as condition for receipt of RATA.

Assailing the Opinion, respondent filed a petition for certiorari with the Court of Appeals. Respondent contended that her non-receipt of RATA violates the rule on non-dimution of salary in reassignments.

#### **The Ruling of the Court of Appeals**

In its Decision dated 24 May 2005, the Court of Appeals granted respondent's petition and ordered the DBM and Fontanilla to pay respondent RATA for the duration of her reassignment. Sustaining respondent's theory, the Court of Appeals characterized RATA as part of salary, thus subject to the rule on non-dimution of salary in reassignments.<sup>[6]</sup> The Court of Appeals found erroneous the DBM's reliance on the GAAs requiring actual performance of functions as precondition for payment of RATA because respondent's salary was charged against the local budget of Bacnotan and not against the national budget.<sup>[7]</sup>

The DBM's motion for reconsideration equally proved unsuccessful.<sup>[8]</sup>

Hence, this petition.

The DBM argues that RATA is not part of salary and does not attach to the position but is paid based on the actual performance of functions. Hence, respondent, not having been in the actual performance of her functions as treasurer of Bacnotan during her reassignment to the La Union treasurer's office, is not entitled to receive RATA except for 1999 because the GAA for that year did not require actual performance of functions as condition for payment of RATA.

### **The Issue**

The question is whether, after her reassignment to the La Union treasurer's office, respondent, the treasurer of Bacnotan, was entitled to receive RATA.

### **The Ruling of the Court.**

We hold that respondent was entitled to receive RATA after her reassignment, not because the allowance forms part of her salary, but because the discontinuance of payment lacks legal basis.

### ***RATA Distinct from Salary***

The DBM correctly characterizes RATA as allowance distinct from salary. Statutory law,<sup>[9]</sup> as implemented by administrative issuances<sup>[10]</sup> and interpreted in decisions,<sup>[11]</sup> has consistently treated RATA as distinct from salary. Unlike salary which is paid for services rendered, RATA belongs to a basket of allowances<sup>[12]</sup> to defray *expenses* deemed unavoidable in the discharge of office.<sup>[13]</sup> Hence, RATA is paid only to certain officials who, by the nature of their offices, incur representation and transportation expenses.

However, the foregoing does not inexorably lead to the conclusion that *under all circumstances* and *despite lack of legal basis*, RATA is paid only if the RATA-entitled officer actually discharges his office. *First*, it became necessary to distinguish allowances (such as RATA) from salary mainly because under Section 12 of the Compensation and Position Classification Act of 1989 (RA 6758)<sup>[14]</sup> (applicable to all public sector employees), all forms of "financial assistance" and "allowances"<sup>[15]</sup> were integrated to the standardized salaries except for certain allowances specified by RA 6758 (such as RATA) and as determined by regulation.<sup>[16]</sup> *Second*, non-

performance of duties may result from compliance with orders devoid of the employee's volition such as suspension, termination resulting in reinstatement, or, as here, reassignment. At any rate, the denial of RATA must be grounded on relevant and specific provision of law.

***No Law Justifies Denial of RATA for  
Reassigned Local Government Officials***

The DBM concedes that as Municipal Treasurer, respondent was entitled to receive (and did receive) RATA because such position is equivalent to a head of a municipal government department.<sup>[17]</sup> However, the DBM contends that respondent's reassignment to La Union treasurer's office cut off this entitlement. As bases for this claim, the DBM invokes the GAAs from 1996 to 2005 (except in 1999<sup>[18]</sup>) uniformly providing (in different sections<sup>[19]</sup>) thus:

[T]he following officials and those of equivalent rank as may be determined by the Department of Budget and Management *while in the actual performance of their respective functions* are hereby granted monthly commutable representation and transportation allowances payable from the programmed appropriations provided for their respective offices not exceeding the rates indicated below x x x. (Emphasis supplied)

As secondary basis, the DBM calls the Court's attention to Section 3.3.1 of the National Compensation Circular No. 67 (Section 3.3.1), dated 1 January 1992, which provides:

3.3. The officials and employees referred to in Sections 2.1, 2.2 and 2.3 hereof shall *no longer be authorized to continue to collect RATA* in the following instances:

3.3.1 *When on full-time detail* with another organizational unit of the *same agency*, another agency, or special project for one (1) full calendar month or more, except *when the duties and responsibilities they perform are comparable with those of their regular positions*, in which case, they may be authorized to continue to collect RATA on a reimbursable basis, subject to the availability of funds[.] (Emphasis supplied)

and contends that respondent falls under the general rule thus justifying the cessation of her RATA payment.

None of these rules supports the DBM's case.

On the relevance of the GAAs, the Court of Appeals correctly pointed out that they find no application to a *local* government official like respondent whose compensation and allowances are funded by local appropriation laws passed by the *Sangguniang Bayan* of Bacnotan. It is the municipal ordinances of Bacnotan,

providing for the annual budget for its operation, which govern respondent's receipt of RATA. Although the records do not contain copies of the relevant Bacnotan budget ordinances, we find significant Fontanilla's referral to the DBM of respondent's April 2002 letter requesting RATA payment.<sup>[20]</sup> Evidently, Bacnotan's annual budgetary appropriations for 1996 to 2005 contained no provision similar to the provisions in the GAAs the DBM now cites; otherwise, Fontanilla would have readily invoked them to deny respondent's request.

The DBM tries to go around this insuperable obstacle by distinguishing *payment* from the *conditions* for the payment and theorizes that although respondent's salary and allowances were charged against Bacnotan's annual budget, they were subject to the condition contained in the GAAs for 1996-2005 linking the payment of RATA to the actual performance of duties.<sup>[21]</sup> The Court cannot subscribe to this theory without ignoring the wall dividing the vertical structure of government in this country and a foundational doctrine animating local governance.

Although the Philippines is a unitary State, the present Constitution (as in the past) accommodates within the system the operation of local government units with enhanced *administrative* autonomy and autonomous regions with limited *political* autonomy.<sup>[22]</sup> Subject to the President's power of general supervision<sup>[23]</sup> and exercising delegated powers, these units and regions operate much like the national government, with their own executive and legislative branches, financed by locally generated and nationally allocated funds disbursed through budgetary ordinances passed by their local legislative councils. The DBM's submission tinkers with this design by making provisions in national budgetary laws automatically incorporated in local budgetary ordinances, thus reducing local legislative councils -- from the provinces down to the *barangays*

and the legislative assembly of the Autonomous Region in Muslim Mindanao, to mere extensions of Congress. Although novel, the theory is anathema to the present vertical structure of Philippine government and to any notion of local autonomy which the Constitution mandates.

Nor can the DBM anchor its case on Section 3.3.1. The National Compensation Circular No. 67, which the DBM issued, is entitled "Representation and Transportation Allowances of *National* Government Officials and Employees," thus excluding *local* government officials like respondent from its ambit. At any rate, respondent falls under the exception clause in Section 3.3.1, having been reassigned to another unit of the same agency with duties and responsibilities "comparable" to her previous position.

Respondent was reassigned to La Union treasurer's office within the same "agency,"<sup>[24]</sup> namely, the Department of Finance, because local treasuries remain under the control of the Secretary of Finance<sup>[25]</sup> (unlike some offices which were devolved to the local governments<sup>[26]</sup>). Paragraphs (d) and (e) of Section 470 of Republic Act No. 7160 (RA 7160), the Local Government Code of 1991, provide the functions of "The treasurer":

(d) *The treasurer* shall take charge of the treasury office, perform the duties provided for under Book II of this Code, and shall: