

EN BANC

[G.R. No. 164542, December 18, 2007]

**ZENAIDA R. LARAÑO, IN HER OWN BEHALF AND AS ATTORNEY-
IN-FACT OF METROPOLITAN WATERWORKS AND SEWERAGE
SYSTEM RETIREES, PETITIONER, VS. COMMISSION ON AUDIT,
RESPONDENT.**

D E C I S I O N

PUNO, CJ.:

This petition on certiorari assails Decision No. 2003-082 dated May 22, 2003^[1] and Resolution No. 2004-015 dated June 24, 2004^[2] of respondent Commission on Audit (COA) that denied the claim for retirement benefits under Republic Act No. 1616^[3] (RA No. 1616) of petitioners Zenaída R. Laraño and other Metropolitan Waterworks and Sewerage System (MWSS) retirees after receiving their benefits under the Revised Early Retirement Incentive Package (Revised ERIP) of MWSS.

The facts of the case are not disputed.

On June 7, 1995, Republic Act No. 8041 (RA No. 8041), otherwise known as the "*National Water Crisis Act of 1995*," was signed into law. It provided, *inter alia* -

Section 7. Reorganization of the Metropolitan Waterworks and Sewerage System (MWSS) and the Local Waterworks and Utilities Administration (LWUA). - Within six (6) months from the approval of this Act, the President of the Republic is hereby empowered to revamp the executive leadership and reorganize the MWSS and the LWUA, including the privatization of any or all segments of these agencies, operations or facilities if necessary, to make them more effective and innovative to address the looming water crisis. For this purpose, the President may abolish or create offices, transfer functions, equipment, properties, records and personnel; institute drastic cost-cutting and other related measures to carry out the said objectives. Moreover, in the implementation of this provision, the prescriptions of Republic Act No. 7430, otherwise known as the "Attrition Law," shall not apply. Nothing in this section shall result in the diminution of the present salaries and benefits of the personnel of the MWSS and the LWUA: *Provided*, That any official or employee of the said agencies who may be phased out by reason of the reorganization authorized herein shall be entitled to such benefits as may be determined by existing laws. x x x

On December 6, 1995, then President Fidel V. Ramos, issued Executive Order No. 286 (EO No. 286), reorganizing the MWSS and the LWUA. Section 6 thereof provides, thus:

Section 6. *Separation Pay.* - Any official or employee of the MWSS and LWUA who may be phased out by reason of the reorganization shall be entitled to such benefits as may be determined by existing laws. For this purpose, the MWSS, LWUA and DBM are hereby directed to study and propose schemes or measures to provide personnel who shall voluntarily retire from the service incentives and other benefits, including the possibility of accelerating the application of the revised compensation package under the Salary Standardization Law, Republic Act No. 6758. The recommendation should be submitted to the President not later than thirty (30) days from the date hereof.

On April 17, 1996, MWSS submitted to then Executive Secretary Ruben Torres the following Revised ERIP^[4] for approval by the President.

April 17, 1996

Hon. RUBEN D. TORRES
Executive Secretary
Office of the President
Malacanang, Manila

Dear Secretary Torres:

After consultations with the Department of Budget and Management required under Executive Order No. 286 (Reorganization of MWSS and LWUA and pursuant to the National Water Crisis Act of 1995 (RA 8041), we are submitting for your approval the following revisions of the previously submitted MWSS Early Retirement Incentive Package (ERIP) with corresponding justifications to wit:

- A. Officials and employees who may be affected by the Reorganization shall be paid the ERIP on the basis of the monthly basic salary at the designated salary step as of December 31, 1995 based on the full implementation of the salary rates authorized under Joint Senate and House of Representatives Resolution (JR) No. 1, s. 1994 (SSL II), computed in accordance with existing retirement laws as follows:

1-20 years	= 1.0 x Basic Pay
21-30 years	= 1.5 x Basic Pay
31 and above	= 2 x Basic Pay

The National Water Crisis Act expressly provides for payment of separation pay benefits as may be determined by existing laws to any official or employee who may be affected by the Reorganization

Full implementation of the Salary Standardization Law II (SSL II) on the designated salary step as of December 31, 1995 under JR No. 1 is hereby proposed as the basis of the ERIP. The National Power Corporation (NPC) was allowed to adopt its own separation package based on its new pay plan, way ahead of the SSL II implementation.

- B. Regular employees who shall be affected by the reorganization and not qualified to retire under any of the existing retirement laws, shall be entitled to one (1) month basic salary for every year of service at the designated salary step as of December 31, 1995 based on the full implementation of the SSL II.

This is consistent with Sec. 9 of RA 6656 otherwise known as the Reorganization Law, which provides that:

"xxx Unless also separated for cause, all officers and employees, including casuals and temporary employees, who have been separated pursuant to reorganization shall, if entitled thereto, be paid the appropriate separation pay and retirement benefit and other benefits under existing laws. Those who are not entitled to said benefits shall be paid a separation gratuity in the amount equivalent to one (1) month salary for every year of serv[ice]. xxx"

- C. Additional premium of 0.50 month p[er] year of service based on standardized salary rate at the designated salary step as of December 31, 1995 shall be granted to affected regular officials and employees.

To ensure smooth implementation of their respective reorganization, other GOCCs and GFIs such as the National Power Corporation (NPC), Development Bank of the Philippines (DBP), Bangko Sentral ng Pilipinas (BSP), and Philippine National Bank (PNB) were earlier allowed to adopt their own separation packages with incentives and premium over and above the existing retirement benefits. (Copy of matrix attached).

- D. Casual employees who shall be affected by the Reorganization shall be entitled to one (1) month basic salary for every year of service, at the designated salary step as of December 31, 1995 based on the full implementation of the SSL II salary rates.

This is also consistent with Section 9 of RA 6656 (Reorganization Law), which specifically provides a separation gratuity for casual and temporary employees in the amount equivalent to one (1) month salary for every year of service.

- E. All allowances and benefits previously received with "subject to refund" colatilla shall not be deducted from the ERIP gratuity and other valid claims of affected officials and employees.

Sec. 7 of RA 8041 (National Water Crisis Act) provides that "Nothing in this section shall result in the diminution of the present salaries and benefits of the personnel of the MWSS (and the LWUA).

To deduct such benefits from the separation and compensation packages will be in violation of the aforementioned provision.

Further, pursuant to Executive Order No. 311 which revokes the

listing of MWSS as a GOCC, and paves the way towards its privatization, we request the waiver of the provisions of DBM-Corporate Compensation Circular No. 11, s. of 1996, covering the implementation of the Revised Compensation and Classification Plan in Government Owned and/or Controlled Corporation[s] (GOCCs) and Government Financial Institutions (GFIs). The waiver shall enable the accelerated implementation of SSL II for MWSS, in conjunction with its reorganization.

In view thereof, the MWSS seeks authority to implement the new/revised rates of the Salary Schedule contained in Senate [and] House of Representatives Joint Resolution No. 1 (SSL II), in two tranches as follows:

First – effective not earlier than July 1, 1995, an amount as may be determined by the governing Board of the MWSS, provided such amount shall in no case exceed 30% of the unimplemented balance of said Salary Schedule;

Second – the remaining balance to be implemented not earlier than May 1, 1996 for personnel availing of the ERIP and upon reappointment for those to be retained in the reorganization.

We hope for your utmost support and priority attention on the above recommendations considering the timetable set forth in Executive Order No. 286, and to ensure the successful implementation of the MWSS Reorganization.

Very truly yours,

(signed)
ANGEL L. LAZARO III,
Ph.D.
Administrator

In his Memorandum of July 10, 1996,^[5] Executive Secretary Torres recommended to President Ramos the approval of the Revised ERIP of MWSS, viz.:

MEMORANDUM FOR THE PRESIDENT

SUBJECT : Revised Early Retirement Incentive Package (ERIP) of the Metropolitan Waterworks and Sewerage System (MWSS)

DATE : 10 July 1996

1. MWSS Administrator Angel L. Lazaro III submits for the President's approval, the within revised ERIP of the agency's employees.

2. The said revised MWSS ERIP proposal has the following features:

The basic salary, for purposes of computing separation/retirement benefits shall be based on the equivalent salary grade/step assignment of the employee in the Salary Schedule prescribed under Joint Resolution (JR) No. 1;

Service credit shall be in accordance with "Existing Retirement Laws;"

On top of the above regular benefits, MWSS proposes a premium equivalent to 0.50 MONTH per year of service, based on salary rates per JR No. 1;

Casual personnel who will be affected by said reorganization shall also be entitled to separation benefits;

All allowances and benefits granted without appropriate legal basis and "subject to refund" shall not be deducted from the benefits due the employee;

That the MWSS will be allowed to accelerate the full implementation of the Salary Schedule under JR No. 1 similar to what was authorized for other government financial institutions.

3. On the proposed premium equivalent to 0.50 month per year of service, DBM Secretary Enriquez opines that the same is not legally feasible adding that "the consequences of seeming adhocism in matters as sensitive and as far reaching as separation benefits does not reflect well on government's overall sense of direction and fairness."
4. Similarly, on the issue of "non-deduction" or "non-refund" of all allowances and benefits previously granted to employees without legal basis, DBM is of the view that this will be a classic case of government corporation blatantly violating existing laws and regulation thereby causing irreparable doubt on government's enforcement ability. Worse, it would be totally unfair to those who have diligently followed the rules.
5. On the acceleration of the full implementation of Salary Schedule under JR No. 1, the DBM says that the MWSS failed to pass almost all of the conditions sine qua non prescribed therefor.
6. In view of the foregoing observations, the DBM, **recommends** the following:
 - 6.1 The computation of separation benefits may be allowed on the basis of the **fully accelerated salary rates** and only for those who will be separated from the corporation as a result of the reorganization.