

EN BANC

[G.R. No. 125129, March 29, 1999]

**JOSEPH H. REYES, PETITIONER, VS. COMMISSION ON AUDIT,
RESPONDENT.**

DECISION

PARDO, J.:

Petitioner Joseph H. Reyes, a member of the TLRC^[1] Provident Fund Board of Trustees, filed this petition with the Supreme Court on June 17, 1996, as an appeal by certiorari under Rule 44 of the Revised Rules of Court, assailing the decision^[2] of the Commission on Audit (COA) disallowing the refund of the government share in the fund to the employee-members, and the denial of the motion for reconsideration of the said decision.^[3]

By Resolution No. 89-003,^[4] the TLRC Executive Committee created a Provident Fund the primary purpose of which was to augment the retirement benefits of the officers and employees of TLRC. The Provident Fund also provided additional benefits^[5] to its members, in accordance with the policies and guidelines approved by the Board of Trustees. The Fund's sources of capital were from contributions of each member consisting of 2% of his gross monthly salary and TLRC's or the government's counterpart share equivalent to 10% of the member's gross monthly salary, earnings of funds and others.^[6]

On June 3, 1993, Corporate Auditor Adelaida S. Flores suspended the transfer of funds from TLRC to the Provident Fund for the years 1990-1991, amounting to P11,065,715.84, per Notice of Suspension No. 93-006^[7]. Auditor Flores held that under Par. 5.4 of Corporate Compensation Circular No. 10, Rules and Regulations issued under R.A. 6758,^[8] fringe benefits were allowed provided that statutory authority covered such grant of benefits. In this case, there is no law authorizing the grant of fringe benefits to TLRC officers and employees. Furthermore, all Provident Funds are covered by R.A. 4537,^[9] to which TLRC may not qualify.

On September 14, 1993, the TLRC Provident Fund Board of Trustees issued Resolution No. 93-2-21^[10], discontinuing the collection of contributions for the Fund from both the TLRC and the members. It also ordered the members' personal contributions collected from March 1, 1993 until September 15, 1993, refunded to them immediately. On September 21, 1993, the Board issued Resolution 93-2-22^[11] dissolving the Provident Fund and ordering the distribution of the personal and corporate shares to the members thereof, on or before October 31, 1993.

On December 2, 1993, Corporate Auditor Flores issued Notice of Disallowance No. 93-003, disallowing in audit the amount of P11,065,715.84, representing the

government's share paid to the TLRC Provident Fund refunded to members, covering the period 1990 to 1991, including all amounts that may have been transferred to the Fund after 1991.^[12]

Petitioner Joseph H. Reyes, a member of the TLRC Board of Trustees, appealed the disallowance to the Commission on Audit. On October 12, 1995, the Commission on Audit denied the appeal per Decision No. 95-571.^[13] The Commission ruled that the government's share in the Provident Fund must be reverted to the TLRC and not be given to the employees. It held that since the primary purpose of the Provident Fund was not realized or attained due to its discontinuance and dissolution, then the employees were not entitled to the government's share in the Fund.

On December 7, 1995, petitioner wrote the Commission on Audit seeking a reversal of COA Decision No. 95-571. On May 2, 1996, the Commission on Audit denied the motion for reconsideration per Decision No. 96-236.^[14]

Hence, this petition to review the decision of the Commission on Audit.

Petitioner contends that the dissolution of the Provident Fund does not render illegal the distribution of government's share to the members. He avers that when TLRC made its contributions to the Provident Fund, it had divested itself of the ownership of whatever contributions it gave. Furthermore, the money contributed to the fund became a trust fund for the benefit of the members. Upon the dissolution of the Fund, the legal and equitable titles were merged in the members, as beneficiaries. He asserts that the members have a vested right, not only on their own contributions, but to the government share as well. He claims that since the Fund's pretermination or dissolution was not due to the members' fault, then it would be unfair and greatly prejudicial to deprive them of the government share to which they are entitled.

We are not impressed. We deny the petition.

To begin with, Article IX-A, Section 7 of the Constitution provides that decision, orders or rulings of the Commission on Audit may be brought to the Supreme Court on certiorari by the aggrieved party.^[15] Under Rule 64, Section 2, 1997 Rules of Civil Procedure, judgment or final order of the Commission on Audit may be brought by an aggrieved party to this Court on certiorari under Rule 65. However, the petition in this case was filed on June 17, 1996, prior to the effectivity of the 1997 Rules of Civil Procedure. Nevertheless, the mode of elevating cases decided by the Commission on Audit to this Court was only by petition for certiorari under Rule 65, as provided by the 1987 Constitution.^[16] The judgments and final orders of the Commission on Audit are not reviewable by ordinary writ of error or appeal *via* certiorari to this Court. Only when the Commission on Audit acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, may this Court entertain a petition for certiorari under Rule 65.^[17] Hence, a petition for review on certiorari or appeal by certiorari to the Supreme Court under Rule 44 or 45 of the 1964 Revised Rules of Court is not allowed from any order, ruling or decision of the Commission on Audit.

However, setting aside the procedural *error pro hac vice*, and treating the petition as one for certiorari under Rule 65, we find that the Commission on Audit did not