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[G.R. No. 132593, June 25, 1999]

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

DECISION

GONZAGA-REYES, J.:

This is a petition for *certiorari* under Rule 64 of the 1997 Rules of Civil Procedure to annul Decision No. 2447 dated July 27, 1992 of the Commission on Audit (COA) denying Philippine International Trading Corporation's (PITC) appeal from the disallowances made by the resident COA auditor on PITC's car plan benefits; and Decision No. 98-048 dated January 27, 1998 of the COA denying PITC's motion for reconsideration.

The following facts are undisputed:

The PITC is a government-owned and controlled corporation created under Presidential Decree (PD) No. 252 on July 21, 1973^[1], primarily for the purpose of promoting and developing Philippine trade in pursuance of national economic development. On October 19, 1988, the PITC Board of Directors approved a Car Plan Program for qualified PITC officers.^[2] Under such car plan program, an eligible officer is entitled to purchase a vehicle, fifty percent (50%) of the value of which shall be shouldered by PITC while the remaining fifty percent (50%) will be shouldered by the officer through salary deduction over a period of five (5) years. Maximum value of the vehicle to be purchased ranges from Two Hundred Thousand Pesos (P200,000.00) to Three Hundred and Fifty Thousand Pesos (P350,000.00), depending on the position of the officer in the corporation. In addition, PITC will reimburse the officer concerned fifty percent (50%) of the annual car registration, insurance premiums and costs of registration of the chattel mortgage over the car for a period of five (5) years from the date the vehicle was purchased. The terms and conditions of the car plan are embodied in a 'Car Loan Agreement'.^[3] Per PITC's car plan guidelines, the purpose of the plan is to provide financial assistance to qualified employees in purchasing their own transportation facilities in the performance of their work, for representation, and personal use.^[4] The plan is envisioned to facilitate greater mobility during official trips especially within Metro Manila or the employee's principal place of assignment, without having to rely on PITC vehicles, taxis or cars for hire.^[5]

On July 1, 1989, Republic Act No. 6758 (RA 6758), entitled "An Act Prescribing a Revised Compensation and Position Classification System in the Government and For Other Purposes", took effect. Section 12 of said law provides for the consolidation of allowances and additional compensation into standardized salary rates save for certain additional compensation such as representation and transportation

allowances which were exempted from consolidation into the standardized rate. Said section likewise provides that other additional compensation being received by incumbents as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

Section 12, RA 6758, reads -

"SEC. 12. *Consolidation of All 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."

To implement RA 6758, the Department of Budget and Management (DBM) issued Corporate Compensation Circular No. 10 (DBM-CCC No. 10). Paragraph 5.6 of DBM-CCC No. 10 discontinued effective November 1, 1989, all allowances and fringe benefits granted on top of basic salary, not otherwise enumerated under paragraphs 5.4 and 5.5 thereof.

Paragraph 5.6 of DBM-CCC No. 10 provides:

"5.6 Payment of other allowances/fringe benefits and all other forms of compensation granted on top of basic salary, whether in cash or in kind, not mentioned in Sub-paragraphs 5.4 and 5.5^[6] above shall be discontinued effective November 1, 1989. Payment made for such allowance/fringe benefits after said date shall be considered as illegal disbursement of public funds."

On post audit, the payment/reimbursement of the above-mentioned expenses (50% of the yearly car registration and insurance premiums and 50% of the costs of registration of the chattel mortgage over the car) made after November 1, 1989 was disallowed by the resident COA auditor. The disallowance was made on the ground that the subject car plan benefits were not one of the fringe benefits or form of compensation allowed to be continued after said date under the aforequoted paragraph 5.6 of DBM-CCC No. 10^[7], in relation to paragraphs 5.4 and 5.5 thereof.

PITC, on its behalf, and that of the affected PITC officials, appealed the decision of the resident COA auditor to the COA. On July 27, 1992, COA denied PITC's appeal and affirmed the disallowance of the said car plan expenses in the assailed Decision No. 2447 dated July 27, 1992. Relevant portions of the decision read thus:

"Upon circumspect evaluation thereof, this Commission finds the instant appeal to be devoid of merit. It should be noted that the reimbursement/payment of expenses in question is based on the Car Plan benefit granted under Board Resolution No. 10-88-03 adopted by the PITC Board of Directors on October 19, 1988. The Car Plan is undeniably a fringe benefit as appearing in PITC's "Compensation Policy

under the heading "3. Other Fringe Benefits", particularly Item No. 3.13 thereof. Inasmuch as PITC is a government-owned and/or controlled corporation, the grant of the Car Plan (being a fringe benefit) should be governed by the provisions of Corporate Compensation Circular No. 10, implementing RA 6758. Under sub-paragraph 5.6 of said Circular, it explicitly provides:

x x x x x x x x.

Since the Car Plan benefit is not one of those fringe benefits or other forms of compensation mentioned in Sub-paragraphs 5.4 and 5.5 of CCC No. 10, consequently the reimbursement of the 50% share of PITC in the yearly registration and insurance premium of the cars purchased under said Car Plan benefit should not be allowed. xxx."^[8]

PITC's motion for reconsideration was denied by the COA in its Resolution dated January 27, 1998.^[9]

Hence, the instant petition on the following grounds:

"1. That the legislature did not intend to revoke existing benefits being received by incumbent government employees as of July 1, 1989 (including subject car plan benefits) when RA 6758 was passed;

2. That the Car Loan Agreements signed between PITC and its officers pursuant to PITC's Car Plan Program, including the Car Loan Agreements, duly executed prior to the effectivity of RA 6758, constitute the law between the parties and as such, protected by Section 10, Article III of the 1987 Philippine Constitution which prohibits the impairment of contracts; and

3. Finally, that the provisions of PD 985 do not apply to PITC inasmuch as under its Revised Charter, PD 1071, as amended by E.O. 756 and E.O. 1067, PITC is not only expressly exempted from OCPC rules and regulations but its Board of Directors was expressly authorized to adopt compensation policies and other related benefits to its officers/employees without need for further approval thereof by any government office, agency or authority."^[10]

The petition is meritorious.

First of all, we must mention that this Court has confirmed in *Philippine Ports Authority vs. Commission on Audit*^[11] the legislative intent to protect incumbents who are receiving salaries and/or allowances over and above those authorized by RA 6758 to continue to receive the same even after RA 6758 took effect. In reserving the benefit to incumbents, the legislature has manifested its intent to gradually phase out this privilege without upsetting the policy of non-diminution of pay and consistent with the rule that laws should only be applied prospectively in the spirit of fairness and justice.^[12] Addressing the issue as to whether the petitioners-officials may still receive their representation and transportation allowance (RATA) at the higher rates provided by Letter of Implementation (LOI) No. 97 in light of Section 12, RA 6758, this Court said:

"Now, under the second sentence of Section 12, first paragraph, the RATA enjoyed by these PPA officials shall continue to be authorized only if they are "being received by incumbents only as of July 1, 1989." RA 6758 has therefore, to this extent, *amended* LOI No. 97. By limiting the benefit of the RATA granted by LOI No. 97 to *incumbents*, Congress has manifested its intent to gradually phase out this privilege without upsetting its policy of non-diminution of pay."

"The legislature has similarly adhered to this policy of non-diminution of pay when it provided for the transition allowance under Section 17 of RA 6758 which reads:

SEC. 17. Salaries of Incumbents. -Incumbents of position presently receiving salaries and additional compensation/fringe benefits including those absorbed from local government units and other emoluments, the aggregate of which exceeds the standardized salary rate as herein prescribed, shall continue to receive such excess compensation, which shall be referred to as transition allowance. The transition allowance shall be reduced by the amount of salary adjustment that the incumbent shall receive in the future."

While Section 12 refers to allowances that are not integrated into the standardized salaries whereas Section 17 refers to salaries and additional compensation or fringe benefits, **both sections are intended to protect *incumbents* who are *receiving* said salaries and/or allowances at the time RA 6758 took effect.**^[13] (Emphasis supplied.)

Based on the foregoing pronouncement, petitioner correctly pointed out that there was no intention on the part of the legislature to revoke existing benefits being enjoyed by incumbents of government positions at the time of the passage of RA 6758 by virtue of Sections 12 and 17 thereof. There is no dispute that the PITC officials who availed of the subject car plan benefits were incumbents of their positions as of July 1, 1989. Thus, it was legal and proper for them to continue enjoying said benefits within the five year period from date of purchase of the vehicle allowed by their Car Loan Agreements with PITC.

Further, we see the rationale for the corporation's fifty percent (50%) participation and contribution to the subject expenses. As to the insurance premium, PITC, at least, up to the extent of 50% of the value of the vehicle, has an insurable interest in said vehicle in case of loss or damage thereto. As to the costs of registration of the vehicle in the employee's name and of the chattel mortgage in favor of PITC, this is to secure PITC of the repayment of the 'Car Loan Agreement' and the fulfillment of the other obligations contained therein by the employee.

Still further, the vehicle being utilized by the officer is actually being used for corporate purposes because the officer concerned is no longer entitled to utilize company-owned vehicles for official business once he/she has availed of a car plan. Neither is said officer allowed to reimburse the costs of other land transportation used within his principal place of assignment (i.e. Metro Manila) as the vehicle is

presumed to be his official vehicle.^[14] In the event that the employee resigns, retires or is separated from the company without cause prior to the completion of the 60-month car plan, the employee shall be given the privilege to buy the car provided he pays the remaining installments of the loan and the amount equivalent to that portion of the company's contribution corresponding to the unexpired period of the car plan. On the other hand, if the employee has been separated from the company for cause, the company has the other option aside from the foregoing to repossess the car from the employee, in which case, the company shall pay back to the employee all amortizations already made by the employee to the company, interest free.^[15]

Secondly, COA relied on DBM-CCC No. 10^[16] as basis for the disallowance of the subject car plan benefits. DBM-CCC No. 10 which was issued by the DBM pursuant to Section 23^[17] of RA 6758 mandating the said agency to issue the necessary guidelines to implement RA 6758 has been declared by this Court in *De Jesus, et al. vs. Commission on Audit, et al.*^[18] as of no force and effect due to the absence of publication thereof in the Official Gazette or in a newspaper of general circulation. Salient portions of said decision read:

"On the need for publication of subject DBM-CCC No. 10, we rule in the affirmative. Following the doctrine enunciated in Tañada^[19], publication in the Official Gazette or in a newspaper of general circulation in the Philippines is required since DBM-CCC No. 10 is in the nature of an administrative circular the purpose of which is to enforce or implement an existing law. Stated differently, to be effective and enforceable, DBM-CCC No. 10 must go through the requisite publication in the Official Gazette or in a newspaper of general circulation in the Philippines.

In the present case under scrutiny, it is decisively clear that DBM-CCC No. 10, which completely disallows payment of allowances and other additional compensation to government officials and employees, starting November 1, 1989, is not a mere interpretative or internal regulation. It is something more than that. And why not, when it tends to deprive government workers of their allowances and additional compensation sorely needed to keep body and soul together. At the very least, before the said circular under attack may be permitted to substantially reduce their income, the government officials and employees concerned should be apprised and alerted by the publication of said circular in the Official Gazette or in a newspaper of general circulation in the Philippines - to the end that they be given amplest opportunity to voice out whatever opposition they may have, and to ventilate their stance on the matter. This approach is more in keeping with democratic precepts and rudiments of fairness and transparency."^[20]

In the case at bar, the disallowance of the subject car plan benefits would hamper the officials in the performance of their functions to promote and develop trade which requires mobility in the performance of official business. Indeed, the car plan benefits are supportive of the implementation of the objectives and mission of the agency relative to the nature of its operation and responsive to the exigencies of the service.