

## EN BANC

[ G.R. No. 122197, June 26, 1998 ]

### **ZOSIMO M. DIMAANDAL, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.**

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

##### **MARTINEZ, J.:**

This petition for certiorari seeks the reversal of the decision of the Commission on Audit dated September 7, 1995,<sup>[1]</sup> the dispositive portion of which reads, to wit:

"Foregoing premises considered, the instant appeal cannot be given due course. Accordingly, the disallowance in question in the total amount of P52,908.00 is hereby affirmed. Considering that the claim for the RATA differential in the amount of P8,400.00 is devoid of any legal basis, the same is also disallowed. Hence, appellant Zosimo M. Dimaandal is hereby directed to refund the salary and RATA differential in the amount of P61,308.00 he had received from the Provincial Government of Batangas."<sup>[2]</sup>

The undisputed facts:

On November 23, 1992, petitioner Zosimo M. Dimaandal, then holding the position of Supply Officer III, was designated Acting Assistant Provincial Treasurer for Administration by then Governor Vicente A. Mayo of Batangas. Pursuant to the designation, petitioner filed a claim for the difference in salary and Representation and Transportation Allowance (RATA) of Assistant Provincial Treasurer and Supply Officer III for the whole year of 1993 in the total amount of P61,308.00.

However, the Provincial Auditor disallowed in audit P52,908.00 of the claim. What was allowed was only the amount of P8,400.00 which corresponds to the difference in the allowances attached to the designation and the position occupied by the appellant. The disallowance was premised on the following reasons:

- "1. The provisions of Section 2077 of the Revised Administrative Code is not applicable in the instant case as the power to fill the position of Assistant Provincial Treasurer rests on the Secretary of Finance.
2. The designation is temporary in nature and does not amount to the issuance of an appointment as could entitle the designee to receive the salary of the position to which he is designated (Opinion of the Director, Office for Legal Affairs, Civil Service Commission dated January 25, 1994)."

On August 3, 1994, Governor Mayo wrote to the Provincial Auditor requesting reconsideration of the subject disallowance, interposing the following reasons:

"1. That Section 2077 of the Revised Administrative Code is applicable in the instant case as the same provides that the Governor General or the officer having the power to fill-up a temporary absence or disability in the provincial office has the power to order or authorize payment of compensation to any government officer or employee designated or appointed temporarily to fill the place;

2. That the budget containing an appropriation for the position of Assistant Provincial Treasurer for Administration was already approved by the Provincial Board; and

3. That Mr. Dimaandal at the time of his designation as Acting Provincial Treasurer for Administration was no longer performing the duties and functions of Supply Officer III."

The Provincial Auditor, however, denied the request for reconsideration. Appellant was required to refund the amount of P52,908.00 which was disallowed.

Petitioner appealed to the respondent Commission on Audit which sustained the stand of the Provincial Auditor of Batangas as valid and proper. The respondent Commission was of the view that the petitioner was merely designated as an Assistant Provincial Treasurer for Administration in addition to his regular duties. As such, he is not entitled to receive an additional salary. The Commission further opined that petitioner was likewise not entitled to receive the difference in RATA provided for under the Local Budget Circular issued by the Department of Budget and Management considering that the party designating him to such position is not the "duly competent authority," provided for under Section 471 of the Local Government Code. Notably, petitioner was appointed as Assistant Provincial Treasurer for Administration by the Secretary of Finance only on July 8, 1994.

Thus, the respondent Commission not only affirmed the disallowance of the amount of P52,908.00 but likewise disallowed the claim for the RATA differential in the amount of P8,400.00, for being devoid of any legal basis. Petitioner was, therefore, directed to refund the salary and RATA differential in the amount of P61,308.00.

Hence, this petition.

The issue here is whether or not an employee who is designated in an acting capacity is entitled to the difference in salary between his regular position and the higher position to which he is designated.

Petitioner avers that the respondent Commission's decision is "probably not in accordance with applicable decisions of the Supreme Court."<sup>[3]</sup> He cites the cases of *Cui, et. al. vs. Ortiz, et. al.*,<sup>[4]</sup> April 29, 1960; and, *Menzon vs. Petilla*, May 20, 1991,<sup>[5]</sup> which laid down the rule that de facto officers are entitled to salary for services actually rendered. Petitioner contends that he may be considered as a de facto officer by reason of services rendered in favor of the Province of Batangas. He then posits the view that to disallow his compensation and in the process allow the Province of Batangas to keep and enjoy the benefits derived from his services actually rendered would be tantamount to deprivation of property without due process of law, and impairment of obligation of contracts duly enshrined in the Constitution.

On the other hand, the respondent Commission, through the Office of the Solicitor General, maintains that the decisions cited by petitioner do not find application in petitioner's case. In the case of Menzon, what was extended was an appointment to the vacant position of Vice-Governor. Here, what was extended to petitioner was not an appointment but a mere designation. Thus, the nature of petitioner's designation and in the absence of authority of the Governor to authorize the payment of the additional salary and RATA without the appropriate resolution from the Sangguniang Panlalawigan does not make the ruling on de facto officers applicable in this case.

We find the petition to be without merit.

We are not persuaded by petitioner's insistence that he could still claim the salary and RATA differential because he actually performed the functions pertaining to the office of Acting Assistant Provincial Treasurer and, therefore, entitled to the salary and benefits attached to it despite the fact that the Governor of Batangas had no authority to designate him to the said position.

The law applicable is Section 471(a) of RA 7160 otherwise known as the Local Government Code which mandates that:

**"Sec. 471. Assistant Treasurers.** - (a) An assistant treasurer may be appointed by the Secretary of Finance from a list of at least three (3) ranking eligible recommendees of the governor or mayor, subject to civil service law, rules and regulations.

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In fact, the appointing officer is authorized by law to order the payment of compensation to any government officer or employee designated or appointed to fill such vacant position, as provided under Section 2077 of the Revised Administrative Code which states that:

**"Section 2077. Compensation for person appointed to temporary service.**

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"In case of the temporary absence or disability of a provincial officer or in case of a vacancy in a provincial office, the President of the Philippines or officer having the power to fill such position may, in his discretion, order the payment of compensation, or additional compensation, to any Government officer or employee designated or appointed temporarily to fill the place, but the total compensation paid shall not exceed the salary authorized by law for the position filled."

Undoubtedly, the aforecited laws do not authorize the Provincial Governor to appoint nor even designate one temporarily in cases of temporary absence or disability or a vacancy in a provincial office. That power resides in the President of the Philippines or the Secretary of Finance.

Necessarily, petitioner's designation as Assistant Provincial Treasurer for Administration by Governor Mayo being defective, confers no right on the part of petitioner to claim the difference in the salaries and allowances attached to the position occupied by him.