



Republic of the Philippines
Supreme Court
Baguio City

EN BANC

PHILIPPINE CHARITY
SWEEPSTAKES OFFICE (PCSO),
Petitioner,

G.R. No. 216776

Present:

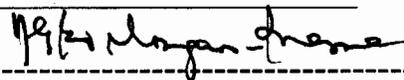
SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE,
LEONEN,
JARDELEZA, and
CAGUIOA, *JJ.*

- versus -

CHAIRPERSON MA. GRACIA M.
PULIDO-TAN, COMMISSIONER
HEIDI L. MENDOZA,
COMMISSIONER ROWENA V.
GUANZON, The Commissioners,
COMMISSION ON AUDIT (COA),
Respondents.

Promulgated:

April 19, 2016



X-----X

DECISION

PERALTA, *J.*:

This petition for *certiorari* under Rule 64, in relation to Rule 65, of the Rules of Court (*Rules*) seeks to annul and set aside the June 5, 2014 Decision¹ and December 22, 2014 Resolution² of the Commission on Audit

¹ *Rollo*, pp. 19-24.

² *Id.* at 25.



(COA) Commission Proper, which affirmed the notice of disallowance on the cost of living allowance received by the officials and employees of the Philippine Charity Sweepstakes Office-Nueva Ecija Provincial District Office in 2010.

Created by Republic Act (R.A.) No. 1169,³ as amended by Presidential Decree (P.D.) No. 1157⁴ and Batas Pambansa (B.P.) Blg. 42,⁵ the Philippine Charity Sweepstakes Office (PCSO) is the principal government agency for raising and providing funds for health programs, medical assistance and services, and charities of national character. On March 4, 2008, the PCSO Board of Directors, through Resolution No. 135, approved the payment of monthly cost of living allowance (COLA) to its officials and employees for a period of three (3) years in accordance with the Collective Negotiation Agreement. Pursuant thereto, in 2010, the PCSO released the sum of ₱381,545.43 to all qualified officials and employees of its Nueva Ecija Provincial District Office. A year after, on March 19, 2011, Executive Secretary Paquito N. Ochoa, Jr. confirmed the benefits and incentives provided for in Resolution No. 135, but with a directive to the PCSO to strictly abide by Executive Order (E.O.) No. 7 that imposed a moratorium on any grant of new or increase in the salaries and incentives until specifically authorized by the President.⁶

On post audit, the Team Leader and Supervising Auditor of the PCSO-Nueva Ecija Provincial District Office issued Notice of Disallowance (ND) 11-001-101-(10)⁷ dated May 16, 2011 invalidating the payment of P381,545.43 on the grounds that it is contrary to the Department of Budget and Management (DBM) Circular No. 2001-03 dated November 12, 2001 and it amounts to double compensation that is prohibited under the 1987 Constitution. Those found liable for the disallowed disbursement were:

³ Entitled "*An Act Providing for Charity Sweepstakes Horse Races and Lotteries*" (approved and took effect on June 18, 1954).

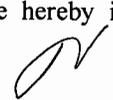
⁴ Entitled "*Increasing the Rates of Tax on Winnings in Jai-Alai and Horse-Racing and the Share of the Government from the Sweepstakes Total Prize Fund*" (issued and took effect on June 3, 1977).

⁵ Entitled "*An Act Amending the Charter of the Philippine Charity Sweepstakes Office*" (approved and took effect on September 24, 1979).

⁶ Sec. 9 of E.O. No. 7, which is entitled "*Directing the Rationalization of the Compensation and Position Classification System in the Government-Owned and Controlled Corporations (GOCCs) and Government Financial Institutions (GFIs), and for Other Purposes*" and issued on September 8, 2010, states:

SECTION 9. Moratorium on Increases in Salaries, Allowances, Incentives and Other Benefits. – Moratorium on increases in the rates of salaries, and the grant of new or increases in the rates of allowances, incentives and other benefits, except salary adjustments pursuant to Executive Order No. 811 dated June 17, 2009 and Executive Order No. 900 dated June 23, 2010, are hereby imposed until specifically authorized by the President.

⁷ *Rollo*, pp. 35-36.



Name	Position/ Designation	Nature of Participation in the Transaction
1. Josefina A. Sarsonas	Department Manager	Approving Officer
2. Francis S. Manalad	CLOO	Recommending Approval
3. Alberto B. Pertinente	Acting Auditor	
5. Mary Ann T. Baltazar	Acting SLOO	Certifies Cash Available
6. Moriel C. Blanco	Cashier II	Issued Check ⁸

The PCSO appealed, but the COA Regional Director affirmed the disallowance in a Decision⁹ dated September 6, 2012. Similarly, the COA Commission Proper denied the petition for review and motion for reconsideration of PCSO. Hence, this petition contending that:

1. The PCSO Board of Directors is authorized under Sections 6 and 9 of R.A. No. 1169, as amended, to fix salaries and to determine allowances, bonuses, and other incentives of its officers and employees;
2. Executive Secretary Ochoa, Jr. approved the grant of benefits and incentives previously given to the PCSO officials and employees and such *post facto* approval/ratification by the Office of the President is enshrined in Article VII Section 17 of the 1987 Constitution in relation to Book III Section 1 of the Administrative Code of 1987 as well as recognized by the Supreme Court in *Cruz v. Commission on Audit*¹⁰ and *GSIS v. Commission on Audit*;¹¹
3. The disallowance of COLA violates the principle of non-diminution of benefits because the PCSO officials and employees already acquired vested rights over the same for having been a part of their compensation for a considerable length of time; and
4. The recipients of the disallowed amounts need not return the COLA received since they are in good faith for lack of knowledge at the time that the same lacked legal basis.

During the pendency of the case, the COA issued an Order of Execution¹² dated July 3, 2015 directing to withhold the payment of salaries or any amount due the five above-named officials as settlement of their liabilities. Arguing that these employees were discriminated against and were denied due process, the PCSO filed a Petition for the Issuance of

⁸ *Id.* at 36.
⁹ *Id.* at 39-42.
¹⁰ 420 Phil. 102 (2001).
¹¹ 430 Phil. 717 (2002).
¹² *Rollo*, pp. 91-92.

Temporary Restraining Order (*TRO*).¹³ On August 25, 2015, the Court merely noted the prayer for *TRO*.

The petition is denied. No grave abuse of discretion amounting to lack or excess of jurisdiction could be attributed to the COA.

Authority of the PCSO

The PCSO stresses that it is a self-sustaining government instrumentality which generates its own fund to support its operations and does not depend on the national government for its budgetary support. Thus, it enjoys certain latitude to establish and grant allowances and incentives to its officers and employees.

We do not agree. Sections 6 and 9 of R.A. No. 1169, as amended, cannot be relied upon by the PCSO to grant the COLA. Section 6 merely states, among others, that fifteen percent (15%) of the net receipts from the sale of sweepstakes tickets (whether for sweepstakes races, lotteries, or other similar activities) shall be set aside as contributions to the operating expenses and capital expenditures of the PCSO. Also, Section 9 loosely provides that among the powers and functions of the PCSO Board of Directors is “to fix the salaries and determine the reasonable allowances, bonuses and other incentives of its officers and employees as may be recommended by the General Manager x x x **subject to pertinent civil service and compensation laws.**” The PCSO charter evidently does not grant its Board the unbridled authority to set salaries and allowances of officials and employees. On the contrary, as a government owned and/or controlled corporation (GOCC), it was expressly covered by P.D. No. 985 or “*The Budgetary Reform Decree on Compensation and Position Classification of 1976*,” and its 1978 amendment, P.D. No. 1597 (*Further Rationalizing the System of Compensation and Position Classification in the National Government*), and mandated to comply with the rules of then Office of Compensation and Position Classification (OCPC) under the DBM.¹⁴

Even if it is assumed that there is an explicit provision exempting the PCSO from the OCPC rules, the power of the Board to fix the salaries and determine the reasonable allowances, bonuses and other incentives was still subject to the DBM review. In *Intia, Jr. v. COA*,¹⁵ the Court stressed that the discretion of the Board of Philippine Postal Corporation on the matter of personnel compensation is not absolute as the same must be exercised in accordance with the standard laid down by law, *i.e.*, its compensation system, including the allowances granted by the Board, must strictly

¹³ *Id.* at 79-86.

¹⁴ See Sections 2 and 4, in relation to Section 17 (g.), of P.D. No. 985 and Section 1, in relation to Section 5, of P.D. No. 1597.

¹⁵ 366 Phil. 273 (1999).



conform with that provided for other government agencies under R.A. No. 6758¹⁶ in relation to the General Appropriations Act. To ensure such compliance, the resolutions of the Board affecting such matters should first be reviewed and approved by the DBM pursuant to Section 6 of P.D. No. 1597. Following *Intia, Jr.*, We subsequently ruled in *Phil. Retirement Authority (PRA) v. Buñag*:¹⁷

In accordance with the ruling of this Court in *Intia*, we agree with petitioner PRA that these provisions should be read together with P.D. No. 985 and P.D. No. 1597, particularly Section 6 of P.D. No. 1597. Thus, notwithstanding exemptions from the authority of the Office of Compensation and Position Classification granted to PRA under its charter, PRA is still required to 1) *observe the policies and guidelines issued by the President* with respect to position classification, salary rates, levels of allowances, project and other honoraria, overtime rates, and other forms of compensation and fringe benefits and 2) *report to the President, through the Budget Commission*, on their position classification and compensation plans, policies, rates and other related details following such specifications as may be prescribed by the President.

Despite the power granted to the Board of Directors of PRA to establish and fix a compensation and benefits scheme for its employees, the same is subject to the review of the Department of Budget and Management. However, in view of the express powers granted to PRA under its charter, the extent of the review authority of the Department of Budget and Management is limited. As stated in *Intia*, the task of the Department of Budget and Management is simply to review the compensation and benefits plan of the government agency or entity concerned and determine if the same complies with the prescribed policies and guidelines issued in this regard. The role of the Department of Budget and Management is supervisory in nature, its main duty being to ascertain that the proposed compensation, benefits and other incentives to be given to PRA officials and employees adhere to the policies and guidelines issued in accordance with applicable laws.

The rationale for the review authority of the Department of Budget and Management is obvious. Even prior to R.A. No. 6758, the declared policy of the national government is to provide “equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions.” To implement this policy, P.D. No. 985 provided for the standardized compensation of government employees and officials, including those in government-owned and controlled corporations. Subsequently, P.D. No. 1597 was enacted prescribing the duties to be followed by agencies and offices exempt from coverage of the rules and regulations of the Office of Compensation and Position Classification. The intention, therefore, was to provide a compensation standardization scheme such that notwithstanding any exemptions from the coverage of the Office of Compensation and Position Classification, the exempt government entity or office is still required to observe the policies and guidelines issued by the President and to submit a report to the Budget Commission on matters concerning position classification and

¹⁶ Entitled “*Compensation and Position Classification Act of 1989*” (took effect on July 1, 1989).
¹⁷ 444 Phil. 859 (2003).

compensation plans, policies, rates and other related details. This ought to be the interpretation if the avowed policy of compensation standardization in government is to be given full effect. The policy of “equal pay for substantially equal work” will be an empty directive if government entities exempt from the coverage of the Office of Compensation and Position Classification may freely impose any type of salary scheme, benefit or monetary incentive to its employees in any amount, without regard to the compensation plan implemented in the other government agencies or entities. Thus, even prior to the passage of R.A. No. 6758, consistent with the salary standardization laws in effect, the compensation and benefits scheme of PRA is subject to the review of the Department of Budget and Management.¹⁸

Upon the effectivity of R.A. No. 6758, GOCCs like the PCSO are included in the Compensation and Position Classification System because Section 16 of the law repeals all laws, decrees, executive orders, corporate charters, and other issuances or parts thereof, that exempt agencies from the coverage of the System, or that authorize and fix position classification, salaries, pay rates or allowances of specified positions, or groups of officials and employees or of agencies, which are inconsistent with the System, including the *proviso* under Section 2 and Section 16 of P.D. No. 985.¹⁹

At present, R.A. No. 10149, or the *GOCC Governance Act of 2011*,²⁰ which was approved on June 6, 2011, is the latest pertinent law. It declares the policy of the State to ensure, among others, that reasonable, justifiable and appropriate remuneration schemes are adopted for the directors/trustees, officers and employees of GOCCs and their subsidiaries to prevent or deter the granting of unconscionable and excessive remuneration packages.²¹ Relative to the purposes of the law, the Governance Commission for Government-Owned or -Controlled Corporations (GCG) was created to act as the central advisory, monitoring, and oversight body that is attached to the Office of the President. Among its powers and functions is to conduct compensation studies, develop and recommend to the President a competitive compensation and remuneration system which shall attract and retain talent but allow the GOCC to be financially sound and sustainable.²² After the conduct of a compensation study, the GCG is tasked

¹⁸ *Phil. Retirement Authority (PRA) v. Buñag*, *supra*, at 869-871. (Citations omitted).

¹⁹ See *Phil. Retirement Authority (PRA) v. Buñag*, *supra* note 17, at 872-873. The subject provision of Section 2 of P.D. No. 985 stated that notwithstanding a standardized salary system established for all employees, additional financial incentives may be established by government corporations and financial institutions for their employees to be supported fully from their corporate funds and for such technical positions as maybe approved by the President in critical government agencies. Section 16 of the law provided for the creation of compensation committees under the leadership of the Commissioner of the Budget, the purpose of which is to recommend on compensation standards, policies, rules and regulations that shall apply to critical government agencies, including those of government-owned or controlled corporations and financial institutions.

²⁰ This Act shall be applicable to all GOCCs, GICPs/GCEs, and government financial institutions, including their subsidiaries, but excluding the Bangko Sentral ng Pilipinas, state universities and colleges, cooperatives, local water districts, economic zone authorities and research institutions: *Provided*, That in economic zone authorities and research institutions, the President shall appoint one-third (1/3) of the board members from the list submitted by the GCG. (Sec. 4, R.A. No. 10149).

²¹ Sec. 2 (f), R.A. No. 10149.

²² Sec. 5 (h), R.A. No. 10149.

to develop a Compensation and Position Classification System (CPCS) applicable to all officers and employees of the GOCCs, whether under the Salary Standardization Law or exempt therefrom, subject to approval of the President.²³ R.A. No. 10149 unequivocally states that, any law to the contrary notwithstanding, no GOCC shall be exempt from the coverage of the CPCS.²⁴

On March 22, 2016, President Benigno Simeon C. Aquino III issued E.O No. 203²⁵ approving the CPCS and the Index of Occupational Services (IOS) Framework for the GOCC Sector that was developed by the GCG. The E.O. provides, among others, that while recognizing the constitutional right of workers to self-organization, collective bargaining and negotiations, the Governing Boards of all covered GOCCs, whether Chartered or Non-chartered, may not negotiate with their officers and employees the economic terms of their CBAs.²⁶ Likewise, the E.O. restates the provision of R.A. No. 10149 that the GCG may recommend for the President's approval incentives outside of the CPCS for certain position titles in consideration of the good performance of the GOCC provided that the GOCC has fully paid all taxes for which it is liable, and it has declared and paid all the dividends required to be paid under its charter or any other law.²⁷

COLA as allowance

To determine whether the COLA is considered as an allowance that is excluded from the standardized salary rates of the PCSO officials and employees, reference must be made to the first paragraph of Section 12 of R.A. No. 6758. It states:

SEC. 12. *Consolidation of 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. x x x"

²³ Sec. 8, R.A. No. 10149.

²⁴ Sec. 9, R.A. No. 10149.

²⁵ ADOPTING A COMPENSATION AND POSITION CLASSIFICATION SYSTEM (CPCS) AND A GENERAL INDEX OF OCCUPATIONAL SERVICES (IOS) FOR THE GOCC SECTOR COVERED BY REPUBLIC ACT NO. 10149 AND FOR OTHER PURPOSES.

²⁶ Sec. 2, E.O No. 203.

²⁷ Sec. 6, E.O No. 203.



Based on the above-quoted, all kinds of allowances are integrated into the prescribed standardized salary rates except:

- (1) representation and transportation allowances (*RATA*);
- (2) clothing and laundry allowances;
- (3) subsistence allowance of marine officers and crew on board government vessels;
- (4) subsistence allowance of hospital personnel;
- (5) hazard pay;
- (6) allowance of foreign service personnel stationed abroad; and
- (7) such other additional compensation not otherwise specified in Section 12 as may be determined by the DBM.²⁸

The foregoing are the only allowances which government employees can continue to receive in addition to their standardized salary rates.²⁹ Since the COLA is not among those expressly excluded from integration by R.A. No. 6758, it should be considered as **deemed integrated** in the standardized salaries of the PCSO officials and employees under the general rule of integration.

R.A. No. 6758 does not require that the DBM should first define those allowances that are to be integrated with the standardized salary rates of government employees before the additional compensation could be integrated into the employees' salaries.³⁰ Instead, until and unless the DBM issues rules and regulations, the enumerated exclusions in items (1) to (6) remain exclusive.³¹ While Section 12 of R.A. No. 6758 is considered as self-executing with respect to items (1) to (6), it is only upon the amplification of the DBM through the issuance and taking effect of implementing rules and regulations that item (7) could be deemed as legally completed.³² The DBM is delegated with the authority to identify such other additional compensation that may be granted to government employees over and above the standardized salary rates.³³ Relative thereto, it must be shown that additional non-integrated allowances are given to government employees of certain offices due to the unique nature of the office and of the work performed by the employee, taking into consideration the peculiar

²⁸ *Maritime Industry Authority v. Commission on Audit*, 745 Phil. 300 (2015); *Land Bank of the Philippines v. Naval*, G.R. No. 195687, April 14, 2014; *Gutierrez, et al. v. Dept. of Budget and Mgt., et al.*, 630 Phil. 1, 14 (2010); *Bureau of Fisheries and Aquatic Resources (BFAR) Employees Union v. Commission on Audit*, 584 Phil. 132, 139 (2008); *NAPOCOR Employees Consolidated Union (NECU) v. National Power Corporation (NPC)*, 519 Phil. 372, 384 (2006); and *National Tobacco Administration v. COA*, 370 Phil. 793, 805 (1999).

²⁹ *NAPOCOR Employees Consolidated Union (NECU) v. National Power Corporation (NPC)*, *supra*.

³⁰ See *Maritime Industry Authority v. Commission on Audit*, *supra* note 28, and *NAPOCOR Employees Consolidated Union (NECU) v. National Power Corporation (NPC)*, *supra* note 20.

³¹ See *Maritime Industry Authority v. Commission on Audit*, *supra* note 28, and *Gutierrez, et al. v. Dept. of Budget and Mgt., et al.*, *supra* note 28, at 16.

³² See *Maritime Industry Authority v. Commission on Audit*, *supra* note 28, and *Gutierrez, et al. v. Dept. of Budget and Mgt., et al.*, *supra* note 28, at 16.

³³ See *Maritime Industry Authority v. Commission on Audit*, *supra* note 28.

characteristics of each government office where performance of the same work may entail different necessary expenses for the employee.³⁴

Moreover, in contrast with items (1) to (6), COLA belongs to a different *genus* of allowance. This Court has opined:

Analyzing No. 7, which is the last clause of the first sentence of Section 12, in relation to the other benefits therein enumerated, it can be gleaned unerringly that it is a "*catch-all proviso*." Further reflection on the nature of subject fringe benefits indicates that all of them have one thing in common - they belong to one category of privilege called *allowances* which are usually granted to officials and employees of the government to defray or reimburse the expenses incurred in the performance of their official functions. In *Philippine Ports Authority vs. Commission on Audit*, this Court rationalized that "if these allowances are consolidated with the standardized rate, then the government official or employee will be compelled to spend his personal funds in attending to his duties."³⁵

Taking into account the distinction, *Gutierrez, et al. v. Dept. of Budget and Mgt., et al.*³⁶ already settled:

In any event, the Court finds the inclusion of COLA in the standardized salary rates proper. In *National Tobacco Administration v. Commission on Audit*, the Court ruled that the enumerated fringe benefits in items (1) to (6) have one thing in common – they belong to one category of privilege called allowances which are usually granted to officials and employees of the government to defray or reimburse the expenses incurred in the performance of their official functions. Consequently, if these allowances are consolidated with the standardized salary rates, then the government official or employee will be compelled to spend his personal funds in attending to his duties. On the other hand, item (7) is a "catch-all proviso" for benefits in the nature of allowances similar to those enumerated.

Clearly, COLA is not in the nature of an allowance intended to reimburse expenses incurred by officials and employees of the government in the performance of their official functions. It is not payment in consideration of the fulfillment of official duty. As defined, cost of living refers to "the level of prices relating to a range of everyday items" or "the cost of purchasing those goods and services which are included in an accepted standard level of consumption." Based on this premise, COLA is a benefit intended to cover increases in the cost of living. Thus, it is and should be integrated into the standardized salary rates.³⁷

³⁴ See *Maritime Industry Authority v. Commission on Audit*, *supra* note 28. (Citations omitted).

³⁵ *National Tobacco Administration v. COA*, *supra* note 28. (Citation omitted). See also *Maritime Industry Authority v. Commission on Audit*, *supra* note 28; *Bureau of Fisheries and Aquatic Resources (BFAR) Employees Union v. Commission on Audit*, *supra* note 28, at 139-140; and *Phil. International Trading Corp. v. COA*, 461 Phil. 737, 747-748 (2003).

³⁶ *Supra* note 28.

³⁷ *Gutierrez, et al. v. Dept. of Budget and Mgt., et al.*, *supra* note 28, at 16-17. (Citations omitted).

The ruling was subsequently reaffirmed in *Maynilad Water Supervisors Association v. Maynilad Water Services, Inc.*³⁸ and *Land Bank of the Philippines v. Naval*.³⁹ Similar to the social amelioration or educational assistance benefit in *National Tobacco Administration v. COA*,⁴⁰ the Staple Food Incentive in *Phil. International Trading Corp. v. COA*,⁴¹ and the food basket allowance in *Bureau of Fisheries and Aquatic Resources (BFAR) Employees Union v. Commission on Audit*,⁴² the COLA is a benefit which is in the nature of financial assistance or bonus, not allowance, the specific purpose of which is to alleviate the economic condition of the subject PCSO officials and employees.

Notably, on February 12, 1997, Congress enacted R.A. No. 8250 or the General Appropriations Act (*GAA*) for Fiscal Year 1997, which granted Personnel Economic Relief Allowance (*PERA*) to all government officials and employees as a replacement of the COLA.⁴³ Like Additional Compensation (*ADCOM*), *PERA* is a financial benefit given to augment the take-home pay of government employees in view of the increasing cost of living. Both financial benefits are part of compensation embraced in the term “living” allowance provided under R.A. No. 910, as amended.⁴⁴ For *GOCCs*, including government financial institutions, the *PERA* shall be taken from their respective corporate funds, subject to the approval of their governing boards.⁴⁵

Post Facto Approval

Section 29(1), Article VI of the 1987 Constitution provides, “[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law.”

Further, before public funds may be disbursed for salaries and benefits to government officers and employees, it must be shown that these are commensurate to the services rendered and necessary or relevant to the functions of the office. “Additional allowances and benefits must be shown to be necessary or relevant to the fulfillment of the official duties and functions of the government officers and employees.”

In *Yap v. Commission on Audit*, this Court laid down two general requisites before a benefit may be granted to government officials or employees. First is that the allowances and benefits were authorized by law, and second, that there was a direct and substantial relationship

³⁸ G.R. No. 198935, November 27, 2013, 711 SCRA 110.

³⁹ *Supra* note 28.

⁴⁰ *Supra* note 28.

⁴¹ *Supra* note 35.

⁴² *Supra* note 28.

⁴³ *Re: Request of CJ Narvasa (Ret.) for Re-computation of his Creditable Government Service*, 581 Phil. 272, 280 (2008), as cited in *Galang v. Land Bank of the Phils.*, 665 Phil. 37, 57 (2011).

⁴⁴ *Id.*

⁴⁵ DBM Budget Circular No. 12 dated April 7, 1997.

between the performance of public functions and the grant of the disputed allowances. Thus:

[t]o reiterate, the public purpose requirement for the disbursement of public funds is a valid limitation on the types of allowances and benefits that may be granted to public officers. It was incumbent upon petitioner to show that his allowances and benefits were authorized by law and that there was a direct and substantial relationship between the performance of his public functions and the grant of the disputed allowances to him.

The burden of proving the validity or legality of the grant of allowance or benefits is with the government agency or entity granting the allowance or benefit, or the employee claiming the same. x x x.⁴⁶

In this petition, We cannot rule on the validity of the alleged *post facto* approval by the Office of the President as regards the grant of COLA to the PCSO officials and employees. The PCSO failed to prove its existence since no documentary evidence, original copy or otherwise, was submitted before Us. Even so, where there is an express provision of the law prohibiting the grant of certain benefits, the law must be enforced even if it prejudices certain parties on account of an error committed by public officials in granting the benefit.⁴⁷ An executive act shall be valid only when it is not contrary to the laws or the Constitution.⁴⁸ Likewise, as it appears, *Cruz v. Commission on Audit* and *GSIS v. Commission on Audit* are not on all fours with this case since their factual antecedents and applicable rules vary.

Non-Diminution of Benefits

The Court has steadily held that, in accordance with second sentence (first paragraph) of Section 12 of R.A. No. 6758, allowances, fringe benefits or any additional financial incentives, whether or not integrated into the standardized salaries prescribed by R.A. No. 6758, should continue to be enjoyed by employees who were incumbents and were actually receiving those benefits as of July 1, 1989.⁴⁹ Here, the PCSO failed to establish that its officials and employees who were recipients of the disallowed COLA actually suffered a diminution in pay as a result of its consolidation into their standardized salary rates. It was not demonstrated that such officials and employees were incumbents and already receiving the COLA as of July 1, 1989. Therefore, the principle of non-diminution of benefits finds no application to them.

⁴⁶ *Maritime Industry Authority v. Commission on Audit*, *supra* note 28. (Citations omitted).

⁴⁷ *Abellanosa, et al. v. Commission on Audit, et al.*, 691 Phil. 589, 601 (2012).

⁴⁸ See CIVIL CODE, Art. 7 Paragraph (3).

⁴⁹ See *Public Estates Authority v. Commission on Audit*, 541 Phil. 412 (2007); *Phil. National Bank v. Palma*, 503 Phil. 917 (2005); and *Ambros v. Commission on Audit*, 501 Phil. 255 (2005).



Neither is there merit in the contention that the PCSO officials and employees already acquired vested rights over the COLA as it has been a part of their compensation for a considerable length of time. Such representation was not supported by any evidence showing that a substantial period of time had elapsed. Nevertheless, practice, without more – no matter how long continued – cannot give rise to any vested right if it is contrary to law.⁵⁰ While We commiserate with the plight of most government employees who have to make both ends meet, the letter and the spirit of the law should only be applied, not reinvented or modified.⁵¹

Liability and Refund

Since the illegality of the released COLA is settled, the Court shall now proceed to resolve the issue of whether the members of the PCSO Board of Directors, other responsible officers, and the recipients thereof should be held accountable and be ordered to refund the amounts received.

With regard to the disallowance of benefits or allowances of government employees, Our recent rulings⁵² provide useful insights. Recipients or payees need not refund disallowed benefits or allowances when it was received in good faith and there is no finding of bad faith or malice. On the other hand, officers who participated in the approval of such disallowed amount are required to refund only those received if they are found to be in bad faith or grossly negligent amounting to bad faith. Public officials who are directly responsible for, or participated in making the illegal expenditures, as well as those who actually received the amounts therefrom shall be solidarity liable for their reimbursement. The receipt or non-receipt of illegally disbursed funds is immaterial to the solidary liability of government officials directly responsible.

In this case, two administrative issuances are significant: DBM Corporate Compensation Circular No. 10 (DBM-CCC No. 10) and the Amended Rules and Regulations Governing the Exercise of the Right of Government Employees to Organize.

Pursuant to its authority to implement R.A. No. 6758 under Section 23 thereof, the DBM issued DBM-CCC No. 10⁵³ on October 2, 1989. It provided that payment by government corporations of discontinued allowances (*i.e.*, allowances, fringe benefits and all other forms of

⁵⁰ *Abellanosa, et al. v. Commission on Audit, et al.*, *supra* note 47.

⁵¹ *Phil. National Bank v. Palma*, *supra* note 49, at 936.

⁵² See *Silang v. Commission on Audit*, G.R. No. 213189, September 8, 2015 and *Maritime Industry Authority v. Commission on Audit*, G.R. No. 185812, January 13, 2015.

⁵³ Entitled “*Rules and Regulations for the Implementation of the Revised Compensation and Position Classification System Prescribed Under R.A. No. 6758 for Government-Owned and/or Controlled Corporations (GOCCS) and Financial Institutions (GFIS).*”

compensation granted on top of basic salary, whether in cash or in kind, which were not mentioned in Sub-paragraphs 5.4 and 5.5 of DBM-CCC No. 10) effective November 1, 1989 shall be considered as illegal disbursement of public funds. Sub-paragraphs 5.4 and 5.5 do not explicitly include the COLA in the enumeration, to wit:

5.4 The rates of the following allowances/fringe benefits which are not integrated into the basic salary and which are allowed to be continued after June 30, 1989 shall be subject to the condition that the grant of such benefits is covered by statutory authority:

5.4.1 Representation and Transportation Allowances (RATA) of incumbent of the position authorized to receive the same at the highest amount legally authorized as of June 30, 1989 for the level of his position within the particular GOCC/GFI;

5.4.2 Uniform and Clothing Allowance at a rate as previously authorized;

5.4.3 Hazard pay as authorized by law;

5.4.4 Honoraria/additional compensation for employees on detail with special projects or inter-agency undertakings;

5.4.5 Honoraria for services rendered by researchers, experts and specialists who are of acknowledged authorities in their fields of specialization;

5.4.6 Honoraria for lecturers and resource persons/speakers;

5.4.7 Overtime pay in accordance to Memorandum Order No. 228;

5.4.8 Clothing/laundry allowances and subsistence allowance of marine officers and crew on board GOCCs/GFIs owned vessels and used in their operations, and of hospital personnel who attend directly to patients and who by nature of their duties are required to wear uniforms;

5.4.9 Quarters Allowance of officials and employees who are presently entitled to the same;

5.4.10 Overseas, Living Quarters and other allowances presently authorized for personnel stationed abroad;

5.4.11 Night Differential of personnel on night duty;

5.4.12 Per Diems of members of the governing Boards of GOCCs/GFIs at the rate as prescribed in their respective Charters;

5.4.13 Flying Pay of personnel undertaking aerial flights;

5.4.14 Per Diems/Allowances of Chairman and Members/Staff of collegial bodies and Committee; and,

5.4.15 Per Diems/Allowances of officials and employees on official foreign and local travel outside of their official station.

5.5 Other allowances/fringe benefits not likewise integrated into the basic salary and allowed to be continued only for incumbents as of June 30, 1989 subject to the condition that the grant of same is with appropriate authorization either from the DBM, Office of the President or legislative issuances are as follows:

5.5.1 Rice Subsidy

5.5.2 Sugar Subsidy

5.5.3 Death Benefits other than those granted by the GSIS;

5.5.4 Medical/dental/optical allowances/benefits;

5.5.5 Children's allowance;

5.5.6 Special Duty Pay/Allowance;

5.5.7 Meal Subsidy;

5.5.8 Longevity Pay; and

5.5.9 Teller's Allowance



Due, however, to its non-publication in the Official Gazette or in a newspaper of general circulation in the country, DBM-CCC No. 10 was declared ineffective on August 12, 1998 in *De Jesus v. COA*.⁵⁴ Nonetheless, on February 15, 1999, it was re-issued and appears to have been published on March 1, 1999.⁵⁵

Also, under the Amended Rules and Regulations Governing the Exercise of the Right of Government Employees to Organize dated September 28, 2004⁵⁶ that was issued by the Public Sector Labor-Management Council (*PSLMC*), the COLA, again, is not expressly included as one of those “negotiable matters” between the management and the accredited employees’ organization. It was even made clear that “[i]ncreases in salary, allowances, travel expenses, and other benefits that are specifically provided by law are not negotiable.” Rule XII of the Amended Rules and Regulations is quoted below:

RULE XII COLLECTIVE NEGOTIATIONS

Section 1. **Subject of negotiation.** – Terms and conditions of employment or improvements thereof, except those that are fixed by law, may be the subject of negotiation.

Section 2. **Negotiable matters.** – The following concerns may be the subject of negotiation between the management and the accredited employees’ organization:

- (a) schedule of vacation and other leaves;
- (b) personnel growth and development;
- (c) communication system – internal (lateral and vertical), external;
- (d) work assignment/reassignment/detail/transfer;
- (e) distribution of work load;
- (f) provision for protection and safety;
- (g) provision for facilities for handicapped personnel;
- (h) provision for first aid medical services and supplies;
- (i) physical fitness program;
- (j) provision for family planning services for married women;
- (k) annual medical/physical examination;
- (l) recreational, social, athletic and cultural activities and facilities;
- (m) CNA incentive pursuant to PSLMC Resolution No. 4, s. 2002 and Resolution No. 2, s. 2003;⁵⁷ and,
- (n) such other concerns which are not prohibited by law and CSC rules and regulations.

⁵⁴ 355 Phil. 584 (1998).

⁵⁵ *National Home Mortgage Finance Corporation v. Abayari et al.*, 617 Phil. 446, 453 (2009), citing *Magno v. Commission on Audit*, 558 Phil. 76, 87 (2007).

⁵⁶ Pursuant to Section 15 of E.O. No. 180 (entitled “*Providing Guidelines for the Exercise of the Right to Organize of Government Employees, Creating a Public Sector Labor-Management Council, and for Other Purposes*” and dated June 1, 1987).

⁵⁷ PSLMC Resolution No. 2, s. 2003 is entitled “*Grant of Collective Negotiation Agreement (CNA) Incentive for Government Owned and Controlled Corporations (GOCCs) and Government Financial Institutions (GFIs)*.” It was issued on May 19, 2003 and published in Manila Standard on June 4, 2003.

Section 3. **Compensation matters.** – Increases in salary, allowances, travel expenses, and other benefits that are specifically provided by law are not negotiable.

Section 4. **Effectivity of CNA.** – The CNA shall take effect upon its signing by the parties and ratification by the majority of the rank-and-file employees in the negotiating unit.

Section 5. **Other matters.** – Nothing herein shall be construed to prevent any of the parties from submitting proposals regarding other matters to Congress and the proper authorities to improve the terms and conditions of their employment.

In view of the above issuances, the PCSO Board of Directors who approved Resolution No. 135 are liable. Their authority under Sections 6 and 9 of R.A. No. 1169, as amended, is not absolute. They cannot deny knowledge of the DBM and PSLMC issuances that effectively prohibit the grant of the COLA as they are presumed to be acquainted with and, in fact, even duty-bound to know and understand the relevant laws/rules and regulations that they are tasked to implement. Their refusal or failure to do so do not exonerate them since mere ignorance of the law is not a justifiable excuse. As it is, the presumptions of "good faith" and "regular performance of official duty" are disputable and may be contradicted and overcome by other evidence.

The same thing can be said as to the five PCSO officials who were held accountable by the COA. They cannot approve the release of funds and certify that the subject disbursement is lawful without ascertaining its legal basis. If they acted on the honest belief that the COLA is allowed by law/rules, they should have assured themselves, prior to their approval and the release of funds, that the conditions imposed by the DBM and PSLMC, particularly the need for the approval of the DBM, Office of the President or legislature, are complied with. Like the members of the PCSO Board, the approving/certifying officers' positions dictate that they are familiar of governing laws/rules. Knowledge of basic procedure is part and parcel of their shared fiscal responsibility. They should have alerted the PCSO Board of the validity of the grant of COLA. Good faith further dictates that they should have denied the grant and refrained from receiving the questionable amount.

While the cases of *Gutierrez, et al., Maynilad Water Supervisors Association*, and *Land Bank of the Philippines* were not yet promulgated at the time PCSO Board Resolution No. 135 was approved on March 4, 2008, *National Tobacco Administration* was already promulgated almost a decade earlier on August 5, 1999, which made a definitive interpretation of Section 12 of R.A. No. 6758.⁵⁸ Moreover, the basis of COA in disallowing the

⁵⁸

Phil. International Trading Corp. v. COA, supra note 35, at 751.

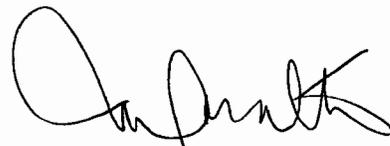


COLA was essentially Section 12 of R.A. No. 6758 and not DBM-CCC No. 10. The nullity of DBM-CCC No. 10 will not affect the legality of R.A. No. 6758 considering that the validity of R.A. No. 6758 should not be made to depend on the validity of its implementing rules.⁵⁹

On the other hand, the other PCSO officials and employees who had no participation in the approval and release of the disallowed benefit can be treated as having accepted the same on the mistaken assumption that Resolution No. 135 was issued in the valid exercise of the power vested in the Board of Directors under the PCSO charter. They are deemed to have acted in good faith in the honest belief that they were entitled to such benefit. They can properly rely on the presumption that the Board acted regularly in the performance of its official duties in providing for the subject benefit. Their acceptance of the disallowed grant, in the absence of any competent proof of bad faith on their part, will not suffice to render them liable for a refund.

WHEREFORE, the petition is **DENIED**. The June 5, 2014 Decision and December 22, 2014 Resolution of the COA Commission Proper, which affirmed Notice of Disallowance No. 11-001-101-(10) dated May 16, 2011 on the COLA received by the officials and employees of PCSO Nueva Ecija Provincial District Office in 2010, is **AFFIRMED WITH MODIFICATION**. The PCSO Board of Directors who approved Resolution No. 135, Series of 2008, and the five PCSO officials who were found liable by the COA are ordered to **REFUND** the illegally disbursed amount of ₱381,545.43 representing the COLA received by the officials and employees of PCSO - Nueva Ecija Provincial District Office in 2010.

SO ORDERED.



DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice

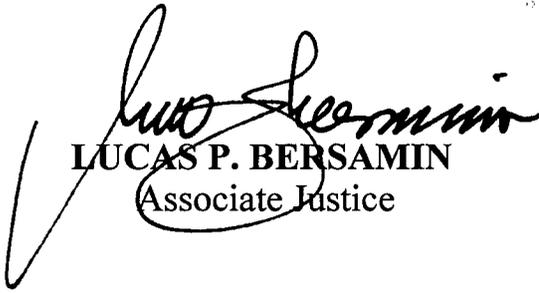
⁵⁹ *Id. at 750.*


ANTONIO T. CARPIO
 Associate Justice


PRESBITERO J. VELASCO, JR.
 Associate Justice


TERESITA J. LEONARDO-DE CASTRO
 Associate Justice


ARTURO D. BRION
 Associate Justice


LUCAS P. BERSAMIN
 Associate Justice

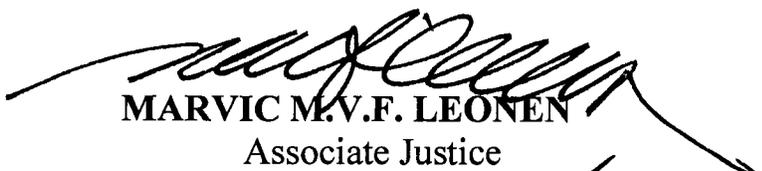

MARIANO C. DEL CASTILLO
 Associate Justice


JOSE PORTUGAL PEREZ
 Associate Justice

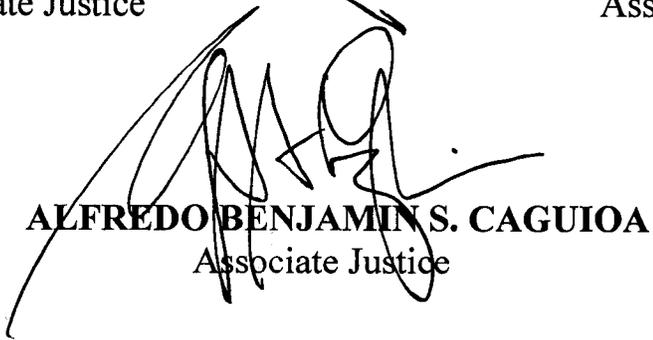

JOSE CATRAL MENDOZA
 Associate Justice


BIENVENIDO L. REYES
 Associate Justice


ESTELA M. PERLAS-BERNABE
 Associate Justice


MARVIC M.V.F. LEONEN
 Associate Justice


FRANCIS H. JARDELEZA
 Associate Justice

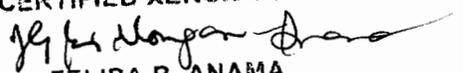

ALFREDO BENJAMIN S. CAGUIOA
 Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.


MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED XEROX COPY:


FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT