



Republic of the Philippines
Supreme Court
Manila

EN BANC

LAND BANK OF THE PHILIPPINES,
Petitioner,

G.R. No. 213424

Present:

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

- versus -

COMMISSION ON AUDIT (COA),
JANET D. NACION, ANTONIO L.
CASTILLO, LEAH S. DAGUIO,
VIRGINIA G. DATUKON, ELSA H.
RAMOS-MAPILI, CECILIA C.
RACIMO, FLORENTINA N.
SAGABAEN, IRENE P. SALVANERA,
NIMFA VILLAROMAN-SANTOS,
TERESITA D. TEVES, and LILIAN
F. VARELA,

Respondents.

Promulgated:

July 11, 2017

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77 Pulido Tan - Ma Gracia M. Pulido Tan
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DECISION

CARPIO, J.:

This is a petition for certiorari¹ assailing the Decision² dated 27 February 2012 and the Resolution³ dated 4 April 2014 of the Commission on

* On official leave.

* On official leave.

¹ Under Rule 65 of the 1997 Revised Rules of Civil Procedure.

² *Rollo*, pp. 31-40. Penned by Chairperson Ma. Gracia M. Pulido Tan, with Commissioners Juanito G. Espino, Jr. and Heidi L. Mendoza concurring.

³ *Id.* at 42.

Audit (COA) in COA CP Case No. 2011-146. The COA affirmed the Decision⁴ dated 4 December 2008 of the COA Legal and Adjudication Office – Corporate (COA LAO-C) which disallowed (1) payments made by Land Bank of the Philippines (LBP) to MSA Academic Advancement Institute (MSA) representing refresher course and examination review fees, and (2) travel expenses incurred by bank officers in connection with the said refresher course.

The Facts

On 3 November 2004 and 1 July 2005, petitioner LBP engaged MSA for the conduct of the Professional Advancement Refresher Course (PARC), a five-day refresher program designed to provide LBP officers nationwide with Pay Grade 9 (Career Executive Service position) and up, with managerial, verbal, and analytical skills which can assist them in effectively carrying out their respective duties and responsibilities. The said refresher course was also LBP's response to the Civil Service Commission's (CSC) policy on temporary appointments as laid down in CSC Memorandum Circular No. 20, series of 2002 (CSC MC No. 20).⁵

It is the policy of the CSC, as the central personnel agency of the government empowered to issue and enforce rules and regulations to carry out its mandate in the recruitment and selection of officials and employees in the career service at all levels, that only those who meet all the requirements for the position to which they are appointed, including the appropriate eligibility prescribed, shall be issued a permanent appointment in the government service.

Due to the pressure posed by CSC MC No. 20 and its effect on the morale and productivity of the bank's affected officers, LBP felt the need to protect the institution from being deprived of bank officers whose appointments were being threatened from being taken away because of the eligibility requirement. Thus, by undergoing a training program like the PARC, LBP sought to prepare its officers, holding temporary appointments (including permanent employees who became temporary employees upon their promotion to positions which require third level eligibility),⁶ for the

⁴ Id. at 43-48.

⁵ CSC MC No. 20, in promulgating CSC Resolution No. 02-1136 (dated 5 September 2002), deals with the revised policies on temporary appointments and publication of vacant positions; signed on 23 September 2002.

⁶ See CSC MC No. 20. It is stated in said circular that appointees in the third level or Career Executive Service (CES) positions require a CES eligibility or Career Service Executive Eligibility (CSEE) as a requirement for permanent appointment to enjoy security of tenure. If any of these officers whose appointments were under temporary status are transferred or promoted to other positions which require third level eligibility, the rules on temporary appointment shall apply to them. The pertinent provisions of the circular state:



Career Service Executive Eligibility/Management Aptitude Test Battery (CSEE/MATB) examination. This examination is conducted by the Career Executive Service Board (CES Board) for third level positions (Assistant Department Manager and up) in the career service.

The CSEE/MATB examination is a unified third level examination system called Career Executive Officer (CEO) Examination that was actually a merger of the Career Executive Service (CES) eligibility and the CSEE which used to be conducted separately by the CES Board and the CSC, respectively. The CSEE/MATB examination was given on 21 November 2004 and 17 July 2005.

The refresher course, done in two batches, was conducted in Metro Manila, Cebu City, and Davao City. A total of 122 bank officers holding the positions of Managers and Assistant Managers attended the first refresher course held in November 2004 while 192 bank officers attended the second refresher course held in July 2005. Fifty-one out of the 192 officers who attended the second refresher course in July 2005 failed in the CSEE/MATB examination given on 21 November 2004. Hence, they were given by LBP's Management Committee the privilege to review for the second time in July 2005, as part of the second batch, which was also conducted by MSA in a five-day refresher course.

On 7 September 2005, the LBP Human Resources Development Department (LBP HRDD) received Audit Observations Memorandum (AOM)⁷ with Reference No. OP-EXP AO 2005-05 issued by LBP's Supervising Auditor, Ms. Emelita R. Quirante. In the AOM, Auditor Quirante acknowledged that the refresher course was intended for the

1. *The revised policies on temporary appointments shall cover all positions in the first, second and third levels of the career service.*

2. *Appointees under temporary status do not have security of tenure and may be separated from the service, with or without cause. As such, they shall not be considered illegally terminated and hence, not entitled to claim back wages and/or salaries and ask for reinstatement to their positions.*

3. *Appointees under temporary status may be terminated without necessarily being replaced by another. Temporary appointees may also be replaced within the twelve month period by qualified eligibles or even by non-eligibles.*

A 30-day written notice signed by the appointing authority shall be given to the temporary appointee prior to termination/removal or replacement.

4. *Appointees to Career Executive Service (CES) positions who do not possess any CES/CSEE eligibility but who were issued permanent appointments prior to the effectivity of CSC MC No. 46, s.1993 on November 26, 1993, which require a CES eligibility for third level positions or the conversion of their positions to CES positions, enjoy vested right to the position under permanent status; provided that upon transfer or promotion to other positions which require a third level eligibility, the rules on temporary appointments shall apply.*

5. *Appointees to CES positions who do not possess any CES/CSEE eligibility but were issued permanent appointments after the effectivity of CSC MC No. 46, s.1993 but prior to the promulgation of this Resolution, with or without a condition at the back of their appointments that they will not enjoy security of tenure are considered on a temporary status. They are not required to be issued new appointments except upon transfer or promotion to other positions which require third level eligibility. In such case, they will be issued temporary appointments.*

x x x x

⁷ Rollo, pp. 115-117.

advancement and professional growth of the bank officers concerned in their respective careers at LBP. However, she viewed the attendance of the 51 out of the 192 LBP officers who took the refresher course for the second time in July 2005 as an unwarranted government expense and considered it to be a personal undertaking. Thus, the seminar and training expenses of the 51 LBP officers in the amount of ₱341,769.87, as well as the traveling expenses including board and lodging incurred by said participants, were treated in audit as unnecessary/excessive expenses. As a consequence, Auditor Quirante recommended the following:

- Require the concerned officers to refund the review expenses amounting to ₱341,769.87 or ₱6,701.37 per participant (₱1,286,663.01/192 participants, DV #046913). The Bank should consider providing the benefit only once for each officer to give chance to others.
- Instruct the concerned officers to file their application for leave since the attendance to the seminar of concerned officers should be considered personal.
- Require the participants from the field units to refund the traveling expenses including board and lodging claimed.⁸

Assistant Vice-President, Voltaire Pablo P. Pablo III, the head of LBP HRDD, wrote a Memorandum⁹ dated 3 November 2005 to Auditor Quirante explaining that the LBP Management Committee approved those who have already availed of the refresher course during its first run to take another training course for the second time in view of the CSEE/MATB unified third level examination which merged CES eligibility and CSEE examinations resulting to the addition and deletion of some subjects in the previous CSEE. Thus, the Management Committee agreed to offer the training course not only to first timers but also to those who have already availed of the first refresher course.

In a memorandum-rejoinder,¹⁰ Auditor Quirante maintained her position that the refresher course should be availed of only once to give chance to others and for prudence in government spending. Auditor Quirante also informed LBP that the matter has been elevated to the COA for a more authoritative evaluation.

On 16 January 2007, the COA Legal and Adjudication Office-Corporate (COA LAO-C), through respondent Director IV Janet D. Nacion (Director Nacion), issued a Notice of Disallowance (ND) No. LBP-001-(2005).¹¹ The COA LAO-C disallowed for lack of legal basis, not only the review fees and expenses of the 51 officers who attended the second refresher course as recommended by the Supervising Auditor of LBP, but **ALL** the review fees and expenses paid by LBP to MSA in the total amount of ₱1,778,100.51 pertaining to the attendance of 314 bank officers – 122 in

⁸ Id. at 117.

⁹ Id. at 118.

¹⁰ Id. at 119.

¹¹ Id. at 49-56.

the November 2004 and 192 in the July 2005 refresher courses, respectively. The relevant portion of the Notice of Disallowance states:

Please be informed that payments for the CSEE/MATB review fees to MSA in the total amount of ₱1,778,100.51 have been disallowed in audit for lack of legal basis. The CSEE/MATB is an eligibility examination for personal enhancement and not to improve performance and job competency, hence, the payment for the review fees to MSA are considered unnecessary expenses in violation of COA Circular No. 85-55A dated September 8, 1985.¹²

The venue and inclusive dates of the review classes corresponding to the amount disallowed are outlined¹³ as follows:

CV No.	Amount Disallowed	Venue	Inclusive Dates
037502	₱ 488,000.00	MSA Katipunan	Nov. 6, 14 & 15, 2004
		MSA Katipunan	Nov. 7, 14 & 15, 2004
		MSA Makati	Nov. 3-4, 7-11 & 21, 2004
		MSA Fairview	Oct. 30, Nov. 6 & 13, 2004
		MSA Cebu City	Nov. 9-11, 2004
046913	₱ 1,286,663.01	MSA Cebu City	July 2-5, 2005
		Mindanao Training Resource Center	July 8-12, 2005
		MSA Makati/LBP Plaza	July 11-15, 2005
		MSA Katipunan/LBP Plaza	July 11-15, 2005
		LBP Buendia Branch/LBP Plaza	July 11-15, 2005
146941	₱ 3,437.50	MSA Cebu City	July 5, 2005 (venue rental)
Total	₱ 1,778,100.51		

The amounts of ₱488,000.00, ₱1,286,663.01, and ₱3,437.50 refer to the payments of LBP to MSA for the refresher course fees of 122 LBP officers in November 2004, the refresher course fees of 192 LBP officers in July 2005, and for the venue rental in MSA Cebu City, respectively.

Subsequently, LBP's Supervising Auditor, Teresita R. Gojunco, issued a Memorandum¹⁴ dated 19 July 2007, addressed to COA State Auditors – Audit Team Leaders (ATLs) assigned to LBP branches nationwide, disallowing the travel expenses claimed by the LBP officers who participated in the MSA refresher courses in Metro Manila, Cebu City,

¹² Id. at 49.

¹³ Id. at 121.

¹⁴ Id. at 120-121.

and Davao City. Consequently, the ATLS required the LBP officers concerned to file an application for leave for the days covered by the five-day review classes and eventually issued the Notices of Disallowance¹⁵ to the LBP officers concerned pertaining to traveling expenses in the total amount of ₱98,562.

Respondents Antonio L. Castillo, Leah S. Daguio, Virginia G. Datukon, Elsa H. Ramos-Mapili, Cecilia C. Racimo, Florentina N. Sagabaen, Irene P. Salvanera, Nimfa Villaroman-Santos, Teresita D. Teves, and Lilian F. Varela were the ATLS who followed the instruction of Auditor Gojunco and issued separate Notices of Disallowance to the LBP officers who claimed payment for their travel expenses. Thus, Director Nacion and the ATLS assigned in various LBP branches nationwide were impleaded in this case in their official capacity pursuant to Section 5,¹⁶ Rule 64 of the Rules of Court.

On 22 August 2007, LBP filed a petition for review with the COA seeking the reversal and/or modification of the Notice of Disallowance (ND) No. LBP-001-(2005) dated 16 January 2007. The petition was referred to the COA LAO-C pursuant to Item III-A(12)¹⁷ of COA Memorandum No. 2002-053.¹⁸

Pending the resolution of the petition with the COA proper and to avoid any possible technicalities, LBP also filed an Appeal-Memorandum¹⁹ dated 30 January 2008 with the COA Office of the Cluster Director, Cluster I-Financial A, Corporate Government Sector on the separate Notices of Disallowance for the traveling expenses of the participant-bank officers concerned. On 18 July 2008, the appeal-memorandum was forwarded to the COA LAO-C for consolidation with the petition for review earlier filed.

On 4 December 2008, in COA LAO-C Decision No. 2008-078 issued by Director Nacion, the COA LAO-C denied the petition for lack of merit. While finding the expenditures for the conduct of the CSEE/MATB

¹⁵ Id. at 59-85.

¹⁶ SEC. 5. *Form and contents of petition.* – The petition shall be verified and filed in eighteen (18) legible copies. The petition shall name the aggrieved party as petitioner and shall join as respondents the Commission concerned and the person or persons interested in sustaining the judgment, final order or resolution *a quo*. x x x.

¹⁷ 12. The Director, Legal and Adjudication Office for the sector shall act on appeals filed by the aggrieved parties from the disallowances or charges in the form of a decision within thirty (30) days from receipt thereof. He shall entertain only one motion for reconsideration of his decision which he shall act upon within fifteen days from receipt.

¹⁸ Guidelines on the Delineation of the Auditing and Adjudication Functions. Issued on 26 August 2002.

¹⁹ *Rollo*, pp. 122-142.

refresher course in accord with Sections 30²⁰ and 31,²¹ Chapter 5, Subtitle A, Title I, Book V of Executive Order No. 292 (E.O. 292)²² or the Administrative Code of 1987, the same being “intended for the career advancement of, and most importantly, to protect the security of tenure accorded by the Constitution to the government employees,” the COA LAO-C viewed the corresponding cost of review classes for the 51 bank officers who had undergone the refresher course for the second time as an undue privilege tantamount to unwarranted government spending. Thus, the COA LAO-C stated that all the expenses, including review fees and traveling allowances incurred by LBP in connection with the said refresher course were properly disallowed in audit.

LBP filed an appeal through a Manifestation with Motion dated 26 January 2009 with the COA proper. In its COA CP Decision No. 2012-024 dated 27 February 2012, the COA denied the petition and affirmed COA LAO-C Decision No. 2008-078. The dispositive portion of the Decision states:

WHEREFORE, premises considered, this Commission hereby DENIES the Petition and AFFIRMS LAO-C Decision No. 2008-078 dated December 4, 2008 disallowing payments for the CSEE/MATB examination refresher course/review classes paid to MSA amounting to ₱1,778,100.[5]1 and various NDs issued by ATLS of appellant’s branches representing travel expenses in the total amount of ₱98,562.00.²³

LBP filed a motion for reconsideration which was denied for lack of merit by the COA in a Resolution dated 4 April 2014.

Hence, the instant petition.

The Issue

The main issue is whether or not the COA committed grave abuse of discretion amounting to lack or excess of jurisdiction in disallowing the (1) payments made by LBP to MSA for the Professional Advancement

²⁰ SECTION 30. Career and Personnel Development.—The development and retention of a competent and efficient work force in the public service is a primary concern of government. It shall be the policy of the government that a continuing program of career and personnel development be established for all government employees at all levels. An integrated national plan for career and personnel development shall serve as the basis for all career and personnel development activities in the government.

²¹ SECTION 31. Career and Personnel Development Plans.—Each department or agency shall prepare a career and personnel development plan which shall be integrated into a national plan by the Commission. Such career and personnel development plans which shall include provisions on merit promotions, performance evaluation, in-service training, including overseas and local scholarships and training grants, job rotation, suggestions and incentive award systems, and such other provisions for employees’ health, welfare, counseling, recreation and similar services.

²² Signed on 25 July 1987.

²³ *Rollo*, pp. 38-39.

Refresher Course fees and expenses, and (2) travel expenses incurred by LBP bank officers in connection with the second refresher course.

The Court's Ruling

The petition is meritorious.

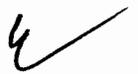
LBP contends that the refresher course was a legitimate undertaking in pursuit of LBP's mandate under the Omnibus Civil Service Rules and Regulations and in compliance with the requirements of CSC MC No. 20. LBP asserts that the personal benefit the bank officers may have gained from the course was only incidental to the bank's ultimate purpose of improving the officers' performance and productivity, and that the required eligibility reasonably contributes to improvement in performance and productivity.

LBP asserts that the attendance of the LBP officers, as well as the corresponding review fees and travel expenses, was official, necessary and allowable in audit. The refresher course was not only essential for the development of their professional workforce but it was also LBP's response to the CSC's policy on temporary appointments which affected the morale and productivity of the bank's affected officers. Also, LBP insists that the refresher course was a necessary expense under COA Circular No. 85-55-A since it supports the bank's objectives and mission to maintain the "highest standards of integrity and performance" relative to the nature of its business and operations as a banking institution.

COA, on the other hand, maintains that there is nothing in CSC MC No. 20 which requires LBP to utilize government funds to prepare temporary appointees for eligibility examinations through trainings conducted by outside service providers. Also, respondents aver that if LBP's employees are already competent in their functions, then there is no compelling need to spend a considerable amount of government funds on procuring such service. Thus, the COA maintains that it correctly disallowed the refresher course as an unnecessary expense since the refresher course was primarily for the benefit of the LBP officers in preparation for the CSEE/MATB eligibility examination rather than for the improvement of the LBP officers' performance and productivity.

It is the general policy of the Court that findings of administrative agencies are accorded respect when the decision is not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. It is only when the COA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings.²⁴

²⁴ *Sanchez v. Commission on Audit*, 575 Phil. 428, 446 (2008).



The main issue should be the propriety of allowing some bank officers to undergo the refresher course for the second time at the expense of the bank. The Supervising Auditor of LBP viewed shouldering the expenses of the 51 bank officers who took the refresher course for the second time as an unwarranted government expense and treated their review fees and traveling expenses as a personal undertaking. The COA LAO-C expressed that “[i]t is enough that the bank has granted them one-time refresher course to provide them the necessary tools that would aid them to pass the CSEE. Allowing them to undertake a refresher course for the second time at the expense of the bank is not fair to other government officers and employees who are entitled to the same privilege.”²⁵

However, while the COA LAO-C considered the attendance of the other officers who took the course for the first time as a valid expense, **ALL** the expenses incurred by LBP for the refresher courses held in November 2004 and July 2005, including review fees and traveling expenses of those officers who took the refresher course for the first time, as indicated in Notice of Disallowance (ND) No. LBP-001-(2005), were disallowed as a whole. The COA proper, in its Decision dated 27 February 2012, affirmed this decision by the COA LAO-C.

The disallowance is erroneous.

Sections 1 and 2, Rule VIII of the Omnibus Rules Implementing Book V of E.O. 292²⁶ state:

SECTION 1. Every official and employee of the government is an asset or resource to be valued, developed and utilized in the delivery of basic services to the public. Hence, the development and retention of a highly competent and professional workforce in the public service shall be the main concern of every department and agency.

Every department or agency shall therefore establish a continuing program for career and personnel development for all agency personnel at all levels, and shall create an environment or work climate conducive to the development of personnel skills, talents and values for better public service.

SEC. 2. Each department or agency shall prepare a career and personnel development plan which shall be integrated into a national plan by the Commission which shall serve as the basis for all career and personnel development activities in the government. The Career and Personnel Development Plan shall include provisions on merit promotion, performance evaluation; in-service training; overseas and local scholarships and training grants; suggestions, incentive award systems, provisions for welfare, counseling, recreation and similar services; and other human resource development interventions such as on the job training, counseling, coaching, job rotation, secondment, job swapping and others.

²⁵ *Rollo*, p. 47.

²⁶ CSC Resolution No. 91-1631, approved on 27 December 1991.

The records²⁷ show that the LBP-HRDD recommended the approval of an external training program, the Professional Advancement Refresher Course by MSA, for the benefit of LBP's bank officers holding career executive positions with Pay Grade 9 and up. The course was approved by then LBP President and Chief Executive Officer Margarito B. Teves. The aim of the refresher course is to provide updated information on the enhancement of managerial and verbal skills, and on the analysis and interpretation of data which can assist the officers concerned in (1) effectively carrying out their respective duties and responsibilities, and (2) enhancing LBP's delivery of service to its clients.

LBP HRDD felt that there was a need for the refresher course in order to (1) assess the bank officers' analytical ability, (2) enhance their analytical skills particularly in verbal reasoning, logical reasoning, and quantitative reasoning, (3) improve their word knowledge and reading skills to make them competent in communication and in the use of the English language, (4) refresh concepts in management and leadership in order to view and understand corporate realities, and (5) provide continuous advancement.

The refresher course was also intended to prepare the bank officers holding temporary appointments (including permanent employees who became temporary employees upon their promotion to positions which require third level eligibility) for the career service executive examination to address the CSC's eligibility requirement for third level positions (Assistant Department Manager with Pay Grade 9 and up) in the bank.

These objectives of LBP in securing MSA's service to conduct a professional advancement refresher course are clearly in line with its mandate to provide a continuing program for career development of its personnel as laid down in the civil service rules. Even LBP's Supervising Auditor and the COA LAO-C were in accord in recognizing the importance of the refresher course for LBP's bank officers. The Supervising Auditor of the LBP, in its AOM dated 7 September 2005, duly acknowledged that the refresher course was conducted for the advancement and professional growth of the LBP officers in pursuit of their careers at LBP. Even the COA LAO-C, in its Decision dated 4 December 2008, found that "x x x the conduct of the refresher course finds legal basis as provided in the above-stated CSC rules and regulations²⁸ the same being intended for the career advancement of, and most importantly, to protect the security of tenure accorded by the Constitution to the government employees."²⁹ As added in COA LAO-C's decision:

The instant refresher course is similar with other privileges granted by the CSC such as scholarships for graduate studies, board or bar examinations that could be availed only once by the prospective

²⁷ *Rollo*, pp. 172-174.

²⁸ *Id.* at 46.

²⁹ *Id.*

applicants. The reason for that policy is very obvious, that is, to give all qualified government employees equal chances to avail the said benefits/privileges and more importantly, to minimize government expenditures without compromising the right of the government employees to career advancements as guaranteed by the aforesaid CSC pronouncements.³⁰

With all these considerations on the benefits of the refresher course for the professional growth and advancement of the officers concerned, all the expenses in connection with the said refresher course should have been allowed by COA.

While it is true that 51 of the bank officers attended the review classes twice after failing to pass the November 2004 CSEE examination, LBP's Management Committee approved their attendance to the second refresher course taking into account the changes in content of the CSEE examination compared to previous ones administered. In the Memorandum dated 3 November 2005 sent by the Head of LBP HRDD to LBP's Supervising Auditor, Mr. Pablo justified these seminar and training expenses in response to LBP's audit observations:

We wish to inform you that initially the training for the 3rd level examination was intended for those who have not previously availed of the first CSEE training course. This was presented to the Management Committee last June 14, 2005 for approval.

However, during the deliberation, the following items were taken into account:

1. The examination, which took place last July 17, 2005, was a unified third level examination system which was called Career Executive Officer (CEO) Examination.
2. Considering that it is a merger of the CES eligibility and CSEE conducted separately by the Career Executive Service Board and the Civil Service Commission respectively, there were subjects that were added and deleted as compared to the previous examinations (CSEE).

Foregoing considered, the MANCOM agreed to offer the training course even to those who have availed of the first CSEE training course.³¹

Thus, with the approval of LBP's Management Committee, some bank officers were allowed to attend the CSEE training and refresher course for the second time **in order to obtain more information on the new examination system**. LBP's contention finds solace in Section 5, Rule VIII of the same Omnibus Rules which states:

³⁰ Id.

³¹ Id. at 118.



Sec. 5. The performance appraisal or evaluation system shall be integrated into the Integrated Human Resource Planning and Development System (IHRPDS) as a tool to enable employees to improve performance and assess their professional growth including determining the potentials and development needs of individual employees. Hence, **if performance appraisal indicates development needs, the individuals concerned shall undergo training or other appropriate human resource development interventions designed to improve their performance and productivity.** (Emphasis supplied)

LBP provided assistance and further training to the concerned bank officers not only to improve their performance and job competency but also to keep the bank from losing competent officers and dissipating its manpower pool. There are no findings that LBP's Management Committee approved the subsequent training program only for the personal interests of the select LBP officers who did not pass the first CSEE examination. In fact, aside from the 51 officers, 141 other bank officers participated in and benefited from the second refresher course. From the two refresher courses conducted by MSA, a total of 263 bank officers gained knowledge and information that helped develop their managerial and analytical skills and enhanced their personal needs while maintaining and even upgrading the bank's standards of professionalism and excellence.

COA asserts that the procurement of the service of MSA is in violation of Section 7(b), Rule VIII of the Omnibus Rules Implementing Book V of E.O. 292 which states:

SEC. 7. In establishing a continuing program for the development of personnel, each department or agency or local government unit shall:

x x x x

(b) Design, implement and evaluate in-service training and development programs solely or in coordination with the Commission and/or other government agencies and institutions. Such programs shall include the following:

x x x x

Middle Management Development Program – refers to a set or series of planned human resource interventions and training courses designed to provide division chiefs and other officials of comparable rank with management and administrative skills and to prepare them for greater responsibilities.

x x x x

Executive Development Program – refers to activities and experiences, and continuing education intended to enhance the managerial skills of government officials or executives who belong to the 3rd level.



COA maintains that the CSEE/MATB refresher course is akin to either the Middle Management Development Program or Executive Development Program which should have been conducted by the LBP's own Organization Development Department (ODD).

LBP argues that the bank conducts regular training courses by its own ODD, formerly the HRDD, for its own officers and employees. These courses are consistent and well-aligned with the objectives of the MSA refresher course. However, the MSA refresher course is updated, enhanced, or supplemented with LBP's ODD-managed courses that deal with culture building and values formation, bank operations, personal/interpersonal effectiveness, communication and customer relations, environmental management, and development enhancement. These subjects or courses lead to learning and knowledge that go beyond personal enhancement and directly improve the officers' performance and productivity.

We agree.

LBP has its own ODD which provides training and development programs. However, LBP is not constrained to provide training in-house only by utilizing its own ODD. Section 7(d) of the same rules states:

SEC. 7. In establishing a continuing program for the development of personnel, each department or agency or local government unit shall:

x x x x

(d) **Provide other human resource development opportunities and activities which shall include training** and scholarship grants, both local and foreign. In addition, **shall utilize alternative strategies or approaches for improving job performance** such as coaching, counseling, job rotation, on-the-job training and others. (Emphasis supplied)

LBP's then HRDD recommended to the LBP President a training program for its bank officers to be conducted by an outside service provider like MSA. Absent any findings to the contrary and given the needs of the bank at the time, the Professional Advancement Refresher Course, which MSA conducted for the benefit of LBP's bank officers, can be considered as a human resource development opportunity and activity or an alternative approach to improving job performance which is allowed and sanctioned under the civil service rules.

Further, COA insists that CSC MC No. 20 does not require LBP to hire service providers to train its temporary appointees for eligibility examinations.

CSC MC No. 20 provides:

MEMORANDUM CIRCULAR

TO: ALL HEADS OF DEPARTMENTS, BUREAUS AND AGENCIES OF THE NATIONAL AND LOCAL GOVERNMENTS, INCLUDING GOVERNMENT-OWNED AND/OR CONTROLLED CORPORATIONS WITH ORIGINAL CHARTERS

SUBJECT: REVISED POLICIES ON TEMPORARY APPOINTMENTS AND PUBLICATIONS OF VACANT POSITIONS

The Civil Service Commission (CSC) as the central personnel agency of the government, promulgates policies, standards and guidelines to promote merit and fitness in the recruitment and selection of officials and employees in the career service at all levels.

The Commission has noted that, there is a growing complaint relative to the issuance of temporary appointments, including the termination and replacement of temporary appointees, especially in the third level. As such, the policies governing the issuance of temporary appointments and the publication of vacant positions need to be revisited to maintain merit and fitness in the civil service and at the same time to protect the rights of government employees holding temporary appointments.

In answer thereto, the Commission has promulgated CSC Resolution No. 02-1136 dated September 5, 2002 prescribing the Revised Policies on Temporary Appointments and Publication of Vacant Positions which provides, as follows:

1. The revised policies on temporary appointments shall cover all positions in the first, second and third levels of the career service.

2. Appointees under temporary status do not have security of tenure and may be separated from the service, with or without cause. As such, they shall not be considered illegally terminated and hence, not entitled to claim back wages and/or salaries and ask for reinstatement to their positions.

3. Appointees under temporary status may be terminated without necessarily being replaced by another. Temporary appointees may also be replaced within the twelve month period by qualified eligibles or even by non-eligibles.

A 30-day written notice signed by the appointing authority shall be given to the temporary appointee prior to termination/removal or replacement.

4. Appointees to Career Executive Service (CES) positions who do not possess any CES/CSEE eligibility but who were issued permanent appointments prior to the effectivity of CSC MC No. 46, s.1993 on November 26, 1993, which require a CES eligibility for third level positions or the conversion of their positions to CES positions, enjoy vested right to the position under permanent status; provided that upon

transfer or promotion to other positions which require a third level eligibility, the rules on temporary appointments shall apply.

5. Appointees to CES positions who do not possess any CES/CSEE eligibility but were issued permanent appointments after the effectivity of CSC MC No. 46, s.1993 but prior to the promulgation of this Resolution, with or without a condition at the back of their appointments that they will not enjoy security of tenure are considered on a temporary status. They are not required to be issued new appointments except upon transfer or promotion to other positions which require third level eligibility. In such case, they will be issued temporary appointments.

6. Vacant positions in all levels in the career service shall be published in the Bulletin of Vacancies in the Civil Service or through other modes of publication. Published vacant positions shall likewise be posted in at least three conspicuous places in the agency for at least ten (10) working days. For local government units, filling of vacant positions shall be made after fifteen (15) calendar days from their posting and publication as provided under RA 7160 (Local Government Code of 1991). The following positions are exempt from the publication and posting requirements:

- Primarily confidential positions;*
- Positions which are policy determining;*
- Highly technical positions;*
- Coterminous with the appointing authority or limited to the duration of a particular project; and*
- Positions to be filled by existing regular employees in the agency in case of reorganization.*

7. All government entities are enjoined to publish non-career positions such as casuals and contractuels including job orders and contracts of services.

8. All positions occupied by holders of temporary appointments shall be published and posted every six months, reckoned from the date the vacant position was last published, simultaneously with the other existing vacant positions.

9. In the appointment of casual and contractual employees, agency heads are enjoined to appoint those who possess civil service eligibilities.

All other existing Civil Service Commission issuances which are inconsistent herewith, are deemed repealed or amended.

This Memorandum Circular shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

In the present case, LBP at the time was under a growing pressure to keep its third level positions occupied only by officers with the appropriate eligibility and had to deal with anxious and demoralized pool of officers whose appointments were on the line. The 263 officers who participated in the said refresher course were all occupying Assistant Department Manager or Manager positions. While it is true that CSC MC No. 20 does not require LBP to hire service providers to train its temporary appointees for eligibility



examinations, there is also nothing in CSC MC No. 20 which forbids LBP to engage the services of an outside provider like MSA to conduct training programs for its officers.

In *Domingo v. Development Bank of the Philippines*,³² we held that the development and retention of a competent and efficient work force in the public service is considered as a primary concern of the government. Hence, employees are selected on the basis of merit and fitness to perform the duties and assume the responsibilities of the position to which they are appointed. Concomitantly, the government has committed itself to engender a continuing program of career and personnel development for all government employees, by establishing a performance evaluation system to be administered in such manner as to continually foster the improvement of individual employee efficiency and organizational effectiveness.

By hiring the services of MSA in administering the Professional Advancement Refresher Course, LBP allowed its officers to undergo personnel and management training and at the same time gave them an opportunity to retain their positions or be promoted by possessing the required civil service eligibility.

Lastly, COA argues that the corresponding costs incurred in the refresher course which were the subject of notices of disallowance are considered as unnecessary expenses in violation of COA Circular No. 85-55-A.³³

Item 3.2 of COA Circular No. 85-55-A defines unnecessary expenditures:

The term pertains to expenditures which could not pass the test of prudence or the diligence of a good father of a family, thereby denoting non-responsiveness to the exigencies of the service. Unnecessary expenditures are those not supportive of the implementation of the objectives and mission of the agency relative to the nature of its operation. This would also include incurrence of expenditure not dictated by the demands of good government, and those the utility of which can not be ascertained at a specific time. An expenditure that is not essential or that which can be dispensed with without loss or damage to property is considered unnecessary. The mission and thrusts of the agency incurring the expenditures must be considered in determining in whether or not an expenditure is necessary.

Under the Declaration of Policies of the same COA circular, there are several factors which determine whether an expenditure is unnecessary. Item 2.2 of COA Circular No. 85-55-A states:

³² 284 Phil. 52, 64 (1992).

³³ Amended Rules and Regulations on the Prevention of Irregular, Unnecessary, Excessive or Extravagant Expenditures of Uses of Funds and Property. Took effect on 8 September 1985.



2.2 The service mission, size, systems, structure, strategy, skills, style, spirit and financial performance of government agency are the primary considerations in determining whether or not their expenditures are irregular, unnecessary, excessive or extravagant.

In *National Center for Mental Health Management v. COA*,³⁴ we quoted then COA Chairperson Francisco Tantuico, Jr. that “the terms ‘irregular,’ ‘unnecessary,’ ‘excessive,’ and ‘extravagant,’ when used in reference to expenditures of funds or uses of property, are relative. The determination of which expenditure of funds or use of property belongs to this or that type is situational. Circumstances of time and place, behavioral and ecological factors, as well as political, social and economic conditions, would influence any such determination. Viewed from this perspective, transactions under audit are to be judged on the basis of not only the standards of legality but also those of regularity, necessity, reasonableness and moderation.”

The refresher course had two objectives – *first*, to train and enhance the skills of the bank’s officers and make them more effective in carrying out their respective duties and responsibilities, and *second*, to prepare the officers to pass the CSEE/MATB examination and be eligible for permanent appointments to third level positions. Here, the true test of the necessity of the refresher course lies on who benefited from it. We believe that both LBP and its officers gained from the refresher course. On one hand, the officers were given an opportunity to grow professionally by acquiring eligibility in their career service, and on the other, the bank gained a workforce with more knowledge and skills in the hope of increasing their efficiency, **whether or not the same officers pass the eligibility examination.** Thus, the refresher course was conducted not solely to aid the bank’s officers to pass the eligibility examination but also to strengthen the bank’s upper management group who supervises LBP’s more than 300 branches and field offices nationwide while performing highly technical or specialized core banking functions. Truly, the refresher course was a necessary and reasonable expenditure for the bank under the circumstances.

Consequently, the Notice of Disallowance (ND) No. LBP-001-(2005) referring to the payments made by LBP to MSA representing review fees in the total amount of ₱1,778,100.51, as well as the other Notices of Disallowance referring to travel expenses of select LBP officers who participated in the second refresher course in the total amount of ₱98,562.00, was erroneously issued by the COA. The COA clearly committed grave abuse of discretion amounting to lack or excess of jurisdiction in promulgating COA CP Decision No. 2012-024, which affirmed LAO-C Decision No. 2008-078.

³⁴ 333 Phil. 222, 239 (1996).

WHEREFORE, the petition is **GRANTED**. The Decision dated 27 February 2012 and the Resolution dated 4 April 2014 of the Commission on Audit in COA CP Case No. 2011-146, which affirmed COA LAO-C Decision No. 2008-078 dated 4 December 2008, are declared **INVALID**.

SO ORDERED.



ANTONIO T. CARPIO
Associate Justice

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice



PRESBITERO J. VELASCO, JR.
Associate Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



DIOSDADO M. PERALTA
Associate Justice

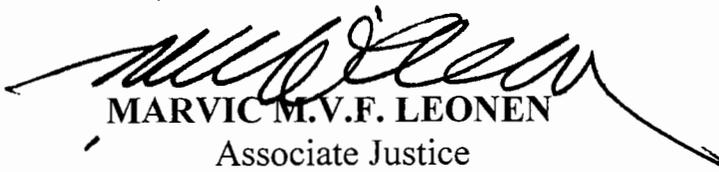


LUCAS P. BERSAMIN
Associate Justice

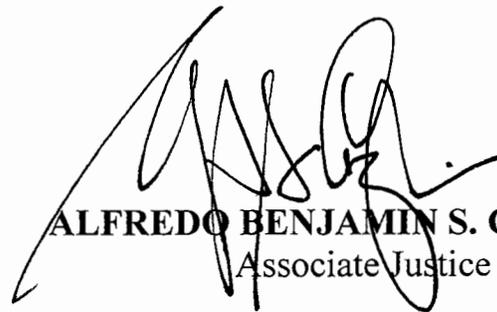
(on official leave)
MARIANO C. DEL CASTILLO
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice

(on official leave)
FRANCIS H. JARDELEZA
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


SAMUEL R. MARTIRES
Associate Justice


NOEL B. TIJAM
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