Republic of the Philippines
Supreme Court
Manila

EN BANC

GUBAT WATER DISTRICT (GWD), SALVADOR F. VILLAROYA, JR., JOSEPHINE A. MEJORADA, and NEDA E. EREÑO,
Petitioners,

- versus -

COMMISSION ON AUDIT,
Respondent.

x----------x

G.R. No. 222054

Members:

BERSAMIN, *C.J.*,
CARPIO, *J.*
PERALTA,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
A. REYES, JR.,
GESMUNDO,
J. REYES, JR.,
HERNANDO,
CARANDANG,*
LAZARO-JAVIER,
INTING, and
ZALAMEDA, *JJ.*

Promulgated:
October 1, 2019

x----------x

DECISION

LAZARO-JAVIER, *J.*:

The Case

This petition for certiorari[1] assails the following dispositions of the Commission on Audit – Commission Proper (COA-CP):

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* On official leave.
1 Under Rule 64 of the Revised Rules of Court, *rollo*, pp. 3-17.

1. Decision No. 2014-181 dated August 28, 2014,[2] affirming the disallowance of the grant of Cost of Living Allowance (COLA) differentials to the concerned employees of Gubat Water District and the obligations of these employees and the officers who authorized the payment of COLA differentials to refund the same; and

2. Resolution dated August 18, 2015,[3] denying petitioners' motion for reconsideration.

Antecedents

Petitioner Gubat Water District (GWD) is a government entity organized and existing under Presidential Decree No. 198 (PD 198), otherwise known as the Provincial Water Utilities Act of 1973.

On August 31, 1979, then President Ferdinand E. Marcos issued Letter of Implementation No. 97 (LOI 97) which, among others, directed additional financial incentives to be paid to government officers and employees including those in government owned or controlled corporations (GOCCs). These additional financial incentives included the Cost of Living Allowance (COLA).[4]

On July 1, 1989, Republic Act No. 6758 (RA 6758), otherwise known as the *Compensation and Position Classification Act of 1989* mandated that allowances and additional compensations received by government officers and employees, including those working in government-owned or controlled corporations and government financial institutions (GFIs) be consolidated into the standardized salary rates provided in the law. Exempted therefrom were 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 therein as may be determined by the Department of Budget and Management (DBM).

Thereafter, the DBM issued Corporate Compensation Circular No. 10 (CCC No. 10), directing that effective November 1, 1989, all allowances and fringe benefits granted in addition to the basic salary, including COLA, were deemed discontinued. CCC No. 10 did not provide for any qualification.

On September 13, 1991, the Court came out with ***Davao City Water District, et al. v. Civil Service Commission, et al.***.[5] It clarified that petitioner, along with other local water districts, is a "*government-owned or*

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[2] Rendered by Chairperson Ma. Gracia M. Pulido Tan and Commissioners Heidi L. Mendoza and Jose A. Fabia, *rollo*, pp. 20-25.
[3] *Rollo*, p. 26.
[4] *Id.* at 91-94.
[5] 278 Phil. 605, 617 (1991).

controlled corporation with original charter," hence, falling within the jurisdiction of the Civil Service Commission (CSC) and Commission on Audit (COA).

In 1998, the Court came out with another ruling in ***De Jesus v. COA***.[6] It declared as ineffective DBM-CCC No. 10 due to its lack of publication, thus:

> Before resolving the other issue — whether or not Paragraph 5.6 of DBM-CCC No. 10 can supplant or negate the pertinent provisions of Rep. Act 6758 which it seeks to implement, we have to tackle first the other question whether or not DBM-CCC No. 10 has legal force and effect notwithstanding the absence of publication thereof in the Official Gazette. This should take precedence because should we rule that publication in the Official Gazette or in a newspaper of general circulation in the Philippines is *sine qua non* to the effectiveness or enforceability of DBM-CCC No. 10, resolution of the first issue posited by petitioner would not be necessary.
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> x x x x x x x x x
>
> On the need for publication of subject DBM-CCC No. 10, we rule in the affirmative. Following the doctrine enunciated in *Tanada,* publication in the Official Gazette or in a newspaper of general circulation in the Philippines is required since DBM-CCC No. 10 is in the nature of an administrative circular the purpose of which is to enforce or implement an existing law. Stated differently, to be effective and enforceable, DBM-CCC No. 10 must go through the requisite publication in the Official Gazette or in a newspaper of general circulation in the Philippines.
>
> In the present case under scrutiny, it is decisively clear that DBM-CCC No. 10, which completely disallows payment of allowances and other additional compensation to government officials and employees, starting November 1, 1989, is not a mere interpretative or internal regulation. It is something more than that. And why not, when it tends to deprive government workers of their allowances and additional compensation sorely needed to keep body and soul together. At the very least, before the said circular under attack may be permitted to substantially reduce their income, the government officials and employees concerned should be apprised and alerted by the publication of subject circular in the Official Gazette or in a newspaper of general circulation in the Philippines — to the end that they be given amplest opportunity to voice out whatever opposition they may have, and to ventilate their stance on the matter. This approach is more in keeping with democratic precepts and rudiments of fairness and transparency.
>
> In light of the foregoing disquisition on the ineffectiveness of DBM-CCC No. 10 due to its non-publication in the Official Gazette or in a newspaper of general circulation in the country, as required by law, resolution of the other issue at bar is unnecessary.
>
> WHEREFORE, the Petition is hereby GRANTED, the assailed Decision of respondent Commission on Audit is SET ASIDE, and

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[6] 355 Phil. 584, 589 and 590-591 (1998).

respondents are ordered to pass on audit the honoraria of petitioners. No pronouncement as to costs.

SO ORDERED.

On two (2) separate dates, the Office of the Government Corporate Counsel (OGCC) issued Opinion Nos. 039 and 140,[7] respectively, where it opined that qualified employees of local water districts were entitled to COLA differentials from the time local water districts were declared as GOCCs until DBM-CC No. 10 itself was declared ineffective in 1998.

Based on ***Davao City Water District***, ***De Jesus*** and the OGCC Opinion Nos. 039 and 140, GWD's Board of Directors issued Resolution No. 18-S-2004 on December 13, 2004, authorizing accrued COLA to be paid to nineteen (19) GWD personnel corresponding to April 1, 1992 to March 15, 1999.[8] These personnel, thus, started receiving their COLA from 2005 until 2008 for a total of P1,573,646.00.

On post-audit, Audit Team Leader Editha Roa-Gutierrez and Supervising Auditor Antoinette P. Conjares issued Notice of Disallowance No. 09-001 (2005-200) dated August 3, 2009[9] on GWD's payment of COLA differentials to its nineteen (19) personnel. According to the Audit Team, the payment was allegedly violative of RA 6758, DBM-CCC No. 10, and DBM-CCC No. 12. The employees who received the disallowed amounts were required to return them.

GWD, through its General Manager Salvador F. Villaroya, and the employees' representatives Josephine A. Mejorada and Neda E. Ereño appealed to the COA-Regional Office.

The Ruling of the COA Regional Office No. V

By Decision No. 2011-C-006 dated July 12, 2011,[10] the COA Regional Office affirmed.

It opined that petitioners failed to prove two (2) things: *first*, the employees concerned were already receiving COLA or its equivalent prior to the issuance of DBM-CCC No. 10 in 1989; and *second*, said COLA had not been integrated yet into their salaries.[11] Too, while LOI 97 explicitly mentioned among its covered offices and agencies the Local Water Utilities Administration (LWUA) and the Metropolitan Waterworks and Sewerage System (MWSS), it did not make mention of local water districts, hence they

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[7] *Rollo*, pp. 27-34.
[8] *Rollo*, pp. 35-36.
[9] *Rollo*, pp. 37-38.
[10] Penned by Regional Director Nilda B. Plaras, *rollo*, pp. 51-60.
[11] *Id.* at 56.

were deemed excluded conformably with the legal maxim *expressio unios est exclusion alterius*.[12]

The Ruling of the COA-Commission Proper

On petitioners' further appeal, the COA-Proper also affirmed under its assailed Decision No. 2014-181 dated August 28, 2014.[13]

Through its assailed Resolution dated August 18, 2015,[14] the COA-Proper denied petitioners' motion for reconsideration.[15]

The Present Petition

Petitioners' Argument

Petitioners now urge the Court to nullify the assailed COA dispositions affirming the disallowance of the COLA payments to the GWD employees. Petitioners basically assert:

(a) It was erroneous for the COA to deem local water districts excluded from the coverage of LOI 97 which took effect long before local water districts were declared as GOCCs in 1992. It was certainly understandable for LOI 97 back then not to have included within its coverage those GOCCs which became such only after its effectivity. One of these GOCCs is GWD.[16]

(b) Having been declared as GOCCs only in 1992, local water districts commenced to be covered by LOI 97 only as of that date. Hence, all the benefits thereunder, particularly COLA, should have been granted them as of 1992. But it never happened because of the supervening issuance of DBM-CCC No. 10 on November 1, 1989. But on August 12, 1998, ***De Jesus*** came out declaring DBM-CCC No. 10 ineffective due to its non-publication. It was only upon the finality of ***De Jesus*** that GWD employees began to receive COLA granted by LOI 97, which in view of the ineffective DBM-CCC No. 10 was deemed not to have been superseded.[17]

(c) In ***PPA Employees Hired After July 1, 1989 v. COA***, the Court held that those PPA employees hired after July 1, 1989 were entitled to COLA. The Court said that due to the non-publication of DBM-CCC No. 10, COLA and Amelioration Allowance (AA) were not effectively integrated into the employees' salaries. Thus, PPA employees became

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[12] *Id.* at 58.
[13] *Id.* at 20-25.
[14] *Id.* at 26.
[15] *Id.* at 80-90.
[16] *Id.* at 10 and 13-15.
[17] *Id.* at 10.

entitled to COLA and AA differentials. For the same reason, GWD employees, too, became entitled to COLA differentials.[18]

(d) Considering that GWD like MWSS is also a water utilities sector, the former similarly falls within the coverage of LOI 97 under the equal protection clause.[19]

(e) Even assuming that GWD employees and officers were not entitled to COLA differentials, they should not be held liable to reimburse the amounts they received or gave out. For they all acted in the honest belief that GWD employees were entitled thereto based on ***Davao City Water District***, ***De Jesus***, and the OGCC Opinion Nos. 039 and 140.[20]

The COA's Counter-Argument

The COA, through Assistant Solicitor General Myrna N. Agno-Canuto and Senior State Solicitor Jonathan L. Dela Vega, ripostes:

(1) Petitioners failed to prove that it acted with grave abuse of discretion when it sustained the disallowance of COLA differentials paid to the employees concerned.[21]

(2) Local water districts were not among the enumerated COLA beneficiaries under LOI 97. Since the enumeration is exclusive, it cannot be extended to other agencies or entities not mentioned therein.[22]

(3) *PPA Employees* does not apply here. For unlike the employees of PPA, petitioners failed to prove that GWD employees were ever paid any COLA at all, hence, how could they have been deprived of this benefit?[23]

Issues

1. Were employees of local water districts such as GWD entitled to COLA under LOI 97?

2. Were GWD employees entitled to COLA differentials under the Court's ruling in ***De Jesus***?

3. Are the GWD employees who received COLA differentials together with GWD officers who authorized their payment liable to return the subject disallowance?

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[18] *Id.* at 11.
[19] *Id.* at 11-12.
[20] *Id.* at 129-130.
[21] *Id.* at 106-108.
[22] *Id.* at 108-109.
[23] *Id.* at 109-111.

Ruling

Entitlement to COLA

Contrary to COA's argument, the employees of local water districts were entitled to COLA under LOI 97, *viz*:

> 1. Scope of the Plan – The Position and Compensation Plans for the Infrastructure and Utilities group shall apply to the corporations in the transport, the power, the infrastructure, and the water utilities sector, as follows:
>
> a. Transport Utilities
>
> Philippine National Lines
> Philippine Aerospace Development Corporation
> Philippine National Railways
> Metro Manila Transit Corporation
>
> b. Power Utilities
>
> National Power Corporation
> National Electrification Administration
> Cavite Electric and Development Authority
>
> c. Infrastructure Utilities
>
> National Irrigation Administration
> Philippine Ports Authority
> National Housing Authority
> Farm Systems Development Corporation
> Philippine Tourism Authority
>
> d. Water Utilities
>
> Local Water Utilities
> Local Water Utilities Administration
> Metropolitan Waterworks and Sewerage System

As worded, Section 1 (d) of LOI 97 specifically included local water utilities, such as GWD.

In ***Metropolitan Naga Water District, et al. v. Commission on Audit,***[24] the Court confirmed that local water districts fell within the coverage of LOI 97, thus:

> *LWDs are included in the coverage of LOI No. 97*
>
> Section 1(d) of LOI No. 97 states:
>
> 1. Scope of the Plan - The Position and Compensation Plans for the Infrastructure and Utilities group shall apply to the corporations in the

[24] 782 Phil. 281, 286-287 (2016).

transport, the power, the infrastructure, and the water utilities sector, as follows:

d. Water Utilities

Local Water Utilities
Local Water Utilities Administration
Metropolitan Waterworks and Sewerage System

As can be gleaned from above, **LWDs are among those included in the scope of LOI No. 97**. A local water utility is defined as any district, city, municipality, province, investor-owned public utility or cooperative corporation which owns or operates a water system serving an urban center in the Philippines, except that the said term shall not include the Metropolitan Waterworks and Sewerage System (*MWSS*) or any system operated by the Bureau of Public Works. It is, therefore, categorical that MNWD, as a LWD, is included in the coverage of LOI No. 97. (Emphasis supplied)

As to when the coverage of local water districts under LOI 97 began, ***Metropolitan Naga Water District*** had this to say:

So although it is correct for MNWD to insist that LWDs were subject to the provisions of LOI No. 97, **it is erroneous for it to claim that LWDs started to be covered by LOI No. 97 only in 1991 when the Court promulgated *Davao City Water District***. In the said case, it was ruled that LWDs, created pursuant to Presidential Decree (*P.D.*) No. 198, were GOCCs with original charter. **It must be remembered that the interpretation of a law by this Court constitutes part of that law from the date it was originally passed, as it merely establishes the contemporaneous legislative intent that the interpreted law carried into effect. Thus, when P.D. No. 198 was enacted in 1973, LWDs were already GOCCs included in the coverage of LOI No. 97**. (Emphasis supplied)

There is no doubt, therefore, that GWD, being a local water utility itself, was entitled to COLA as provided under LOI 97.

Entitlement to COLA differentials

The next question is brought to fore: were GWD employees entitled to COLA differentials in light of ***De Jesus***?

In ***Republic v. Hon. Cortez***,[25] the Court, speaking through Justice Leonen, aptly pronounced that the integration of the COLA into the standardized salary is mandated by RA 6958 "*to do away with multiple allowances and other incentive packages and the resulting differences in compensation among them*." The Court went on to state that:

[25] 805 Phil. 294, 330 and 346 (2017).

The integration of COLA into the standardized salary rates is not repugnant to the law. *Gutierrez, et al. v. Department of Budget and Management, et al.* explains:

> 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.

In the recent case of ***Balayan Water District, et al. v. Lopez, et al.,***[26] the Court specifically discussed why employees of local water districts which were organized and existing under Presidential Decree No. 198 were not entitled to COLA differentials:

> Relevant to the resolution of the present disallowance is Section 12 of R.A. No. 6758. It provided that as a general rule, **all allowances are deemed included in the standardized salary prescribed therein**. However, Section 12 of R.A. No. 6758 enumerated specific non-integrated benefits, namely:
>
> (a) Representation and Transportation Allowance (RATA);
> (b) Clothing and laundry allowances;
> (c) Subsistence allowance of marine officers and crew on board government vessels and hospital personnel;
> (d) Hazard pay;
> (e) Allowances of foreign service personnel stationed abroad; and
> (f) Such other additional compensation not otherwise specified herein as may be determined by the [Department of Budget and Management (DBM)].
>
> In *Maritime Industry Authority v. Commission on Audit,* the Court explained that the legislative policy under Section 12 of R.A. No. 6758 is that **all allowances not specifically excluded therein or subsequently identified by the DBM are deemed integrated in the standardized salary**, to wit:
>
> The clear policy of Section 12 is "to standardize salary rates among government (personnel) and do away with multiple allowances and other incentive packages and the resulting differences in compensation among them." Thus, the general rule is that all allowances are deemed included in the standardized salary. However, there are allowances that may be given in addition to the standardized salary. These non-integrated allowances are specifically identified in Section 12, to wit:

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[26] G.R. No. 229780, January 22, 2019.

1. representation and transportation allowances;
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; and
6. allowances of foreign service personnel stationed abroad.

In addition to the non-integrated allowances specified in Section 12, the Department of Budget and Management is delegated the authority to identify other allowances that may be given to government employees in addition to the standardized salary.

Action by the Department of Budget and Management is not required to implement Section 12 integrating allowances into the standardized salary. Rather, an issuance by the Department of Budget and Management is required only if additional non-integrated allowances will be identified. Without this issuance from the Department of Budget and Management, the enumerated non-integrated allowances in Section 12 remain exclusive.

In *Philippine Health Insurance Corporation v. Commission on Audit,* the Court reiterated that it had been long settled that Section 12 of R.A. No. 6758 is self-executing in integrating allowances notwithstanding the absence of any DBM issuances, *viz:*

Time and again, the Court has ruled that Section 12 of the SSL is self-executing. This means that even without DBM action, the standardized salaries of government employees are already inclusive of all allowances, save for those expressly identified in said section. It is only when additional non-integrated allowances will be identified that an issuance of the DBM is required. Thus, until and unless the DBM issues rules and regulations identifying those excluded benefits, the enumerated non-integrated allowances in Section 12 remain exclusive. When a grant of an allowance, therefore, is not among those excluded in the Section 12 enumeration or expressly excluded by law or DBM issuance, such allowance is deemed already given to its recipient in their basic salary. As a result, the unauthorized issuance and receipt of said allowance is tantamount to double compensation justifying COA disallowance.

Prescinding from the foregoing, the Court had consistently ruled that not being an enumerated exclusion, the COLA is deemed already incorporated i.e, the standardized salary rates of government employees under the general rule of integration of the SSL. x x x

Thus, the COA did not act with grave abuse of discretion in finding that the COLA back payments were without basis as the said allowance was already integrated in the salary received by BWD employees. There was no accrued COLA to speak of, which requires back payments because upon the effectivity of R.A. No. 6758, all allowances, save for those specifically excluded in Section 12, received by government employees were deemed included in the salaries they received. Considering that the COLA had been considered integrated into the basic salary of government employees, there is no basis for the redundant back payment of the said allowances.

> **The ineffectivity of DBM CCC No. 10, which included COLA as among the allowances integrated in the salary, had no effect or consequence to the integration of the COLA into the salary** because DBM issuances are necessary only to identify additional non-integrated benefits to those specifically mentioned in Section 12 of R.A. No. 6758. **Integration of allowances took effect upon the passage of R.A. No. 6758 and does not need further action from the DBM. In short, COLA, not being one of the allowances specifically stated in Section 12 of R.A. No. 6758 as a non integrated benefit, is integrated in the salaries of BWD employees by operation of law**. (Emphasis supplied)

Verily, COLA being already deemed integrated in the salaries of GWD employees, they were no longer entitled to another round of COLA.

Refund of COLA differentials

The employees and officers of GWD, however, should be absolved from returning the COLA differentials in question because the same were granted prior to the issuance and effectivity of DBM NB Circular No. 2005-502, which clarified that "*payment of allowances and other benefits such as COLA which are already integrated in the basic salary remains prohibited unless otherwise provided by law or ruled by the Supreme Court.*"

ACCORDINGLY, the petition for certiorari is **PARTLY GRANTED**. The Decision No. 2014-181 dated August 28, 2014 and the Resolution dated August 18, 2015 of the Commission on Audit are **AFFIRMED with modification**, **DELETING** the liability of the officers and employees of Gubat Water District to refund the COLA differentials subject of disallowance.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:

LUCAS P. BERSAMIN
Chief Justice

ANTONIO T. CARPIO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

JOSE C. REYES, JR.
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

(On official leave)
ROSMARI D. CARANDANG
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
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's Division.

LUCAS P. BERSAMIN
Chief Justice

CERTIFIED TRUE COPY

EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court