EN BANC

G.R. No. 185806 – GENEROSO G. ABELLANOSA, CARMENCITA D. PINEDA, BERNADETTE R. LAIGO, MENELIO D. RUCAT, AND DORIS A. SIAO, *petitioners,* ***versus*** **COMMISSION ON AUDIT AND NATIONAL HOUSING AUTHORITY,** *respondents.*

Promulgated:

November 17, 2020

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CONCURRING OPINION

CAGUIOA, *J.*:

I agree that the 2012 Decision correctly upheld the Notice of Disallowance.[1] I write separately only to clarify the difference of Rule 2c and Rule 2d of the Rules on Return in *Madera v. COA*[2] (*Madera*) as the basis for absolving the petitioners from the liability of returning the disallowed amount of ₱401,284.39.

I take the opportunity to expound on the proper interpretation of "amounts x x x genuinely given in consideration of services rendered"[3] which are the proper exceptions to the general rule of Rule 2c — that payees must return disallowed amounts they respectively received, as originally conceived in *Madera*.

On September 8, 2020, the Court promulgated *Madera* which laid down the Rules on Return, thus:

> *E. The Rules on Return*
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> In view of the foregoing discussion, the Court pronounces:
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> 1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.
> 2. If a Notice of Disallowance is upheld, the rules on return are as follows:
>   a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of a family, are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.
>   b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which, as discussed

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[1] Notice of Disallowance No. NHA-2005-001(01 and 03) dated January 24, 2005.

[2] G.R. No. 244128, September 8, 2020.

[3] Id. at 36.

herein, excludes amounts excused under the following sections 2c and 2d.

c. Recipients — whether approving or certifying officers or mere passive recipients — are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.
d. The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other *bona fide* exceptions as it may determine on a case to case basis.[4]

One of the concepts deliberately stated in broad strokes to await clarification on its proper interpretation in an appropriate case is "amounts x x x genuinely given **in consideration of services rendered**"[5] as an exception to Rule 2c.

Essence of recalibration by the Madera Rules

At its core, and as exhaustively discussed during the deliberations of *Madera*, its animating spirit is (1) the return to the proper recognition of the liability for unlawful expenditures as a single solidary obligation of officers and payees,[6] and (2) an appeal to a more predictable application of *solutio indebiti* across disallowance cases.

This second premise is the foundational principle of Rule 2c of *Madera*. Recipients of properly disallowed amounts are liable to return the amounts they received under Section 43 of the Administrative Code of 1987 and the principle of *solutio indebiti*. On the other hand, excuse under Rule 2c was intended to apply only to "true" exceptions to *solutio indebiti* where a disallowance is upheld, but any procedural mistakes will not justify requiring payees to return what they respectfully received "in consideration of services rendered." Otherwise, unjust enrichment in favor of the Government would result.

In the same manner that contractors in disallowances involving infrastructure or service contracts are allowed to retain amounts representing reasonable compensation for services rendered on the basis of *quantum meruit*, excuse under Rule 2c was intended to recognize situations where payees may be allowed to retain the amounts they received if there is legal basis for the grant of the benefit, and they are entitled to said amounts for having rendered actual services for which the said benefits were given. To do otherwise would sanction unjust enrichment in favor of the Government, as services are rendered in its favor by payees who are not recompensed.

In *Madera*, the Court held:

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4 Id. at 35-36.
5 Emphasis supplied.
6 Such that retention by payees of the disallowed personnel benefits extinguishes the obligation of officers solidarily liable.

> To be sure, the application of the principles of unjust enrichment and *solutio indebiti* in disallowed benefits cases does not contravene the law on the general liability for unlawful expenditures. In fact, these principles are consistently applied in government infrastructure or procurement cases which recognized that a payee contractor or approving and/or certifying officers cannot be made to shoulder the cost of a correctly disallowed transaction when it will unjustly enrich the government and the public who accepted the benefits of the project.[7]

The import of Rule 2c is it exempts payees from return when there are **legal and factual bases** to retain (*i.e.*, that the disallowed benefit was authorized by law, and the payee can show that he rendered actual service so as to be entitled to the said benefit).

To clarify, each Rule in *Madera* covers distinct situations:

1. Rule 2a provides for **no liability** for officers acting in good faith, in the regular performance of official functions, and with the diligence of a good father of a family.

2. Rule 2b treats of the **solidary liability** of officers who are clearly shown to have acted in bad faith, malice, or gross negligence.

3. Rule 2c provides the **general rule** that payees must return based on *solutio indebiti*, **EXCEPT** if the return will sanction unjust enrichment.

4. Rule 2d treats of situations that would otherwise be covered by the general rule in Rule 2c save for the unique circumstances in the case that would prompt the **exercise of the Court's discretion** to excuse the return on a case-to-case basis.

Under this rubric, the benefits that the Court may allow payees to retain as an exception to Rule 2c's rule of return on the basis of *solutio indebiti* are limited to compensation authorized by law including: (i) basic pay in the form of salaries and wages; (ii) other fixed compensation in the form of fringe benefits authorized by law; (iii) variable compensation (*e.g.*, honoraria or overtime pay) within the amounts authorized by law despite the procedural mistakes that might have been committed by approving and certifying officers.[8] These, to my mind, are the only forms of compensation that can truly be considered "genuinely given in consideration of services rendered," such that their recovery by the government resulting from a disallowance (again, only because of procedural mistakes that might have been committed by

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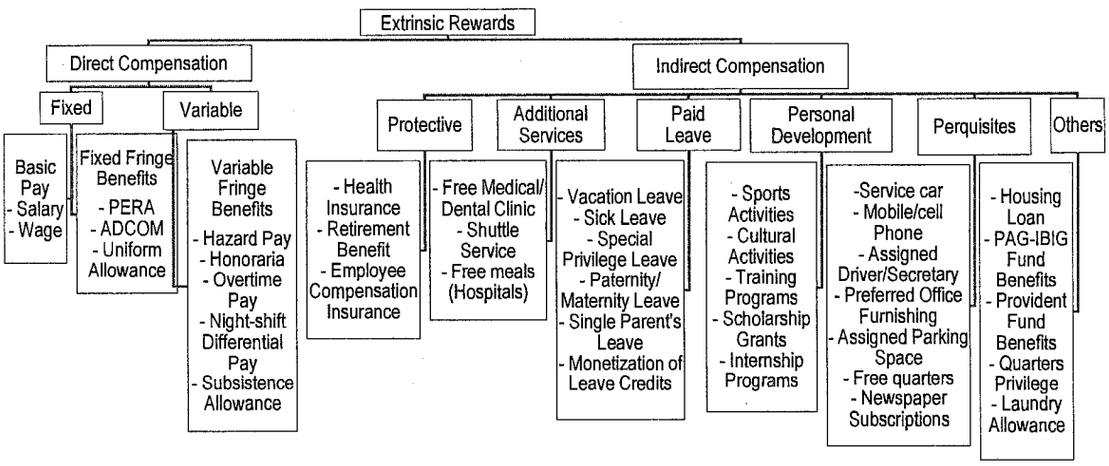
[7] Supra note 2, at 27. The citation for the quoted portion reads: See *Melchor v. Commission on Audit*, G.R. No. 95398, August 16, 1991, 200 SCRA 704, 714, citing *Eslao v. Commission on Audit*, G.R. No. 89745, April 8, 1991, 195 SCRA 730, 739. This case applies the same principle of unjust enrichment in cases where the contractor seeks payment to this case where reimbursement is sought from the official concerned; see also *Andres v. Commission on Audit*, G.R. No. 94476, September 26, 1991, 201 SCRA 780.

[8] See Manual on Position Classification and Compensation, Chapter 3, Total Compensation Chart, p. 3-3.

approving and certifying officers) means the government is unjustly enriched (*i.e.*, it benefitted from services received from its employees without making payment for it).

The exception to Rule 2c was not intended to cover all allowances that can be considered "genuinely given in consideration of services rendered" so as to defeat the general rule that payees are liable to return disallowed personnel benefits that they respectively received.

Under the Compensation and Position Classification System,[9] (CPCS) the Total Compensation Chart shows the following recognized benefits termed "extrinsic rewards:"[10]



The General Provisions of the annual General Appropriations Acts (GAAs) also contain a chapter on Personnel Benefits which enumerates recognized personnel benefits and provides the requirements for their release.[11] Insofar as effective exchange of value is concerned, the direct compensation comprising of salaries and other authorized fringe benefits attached to an employee's position must be the extent of reasonable compensation for services rendered based on *quantum meruit*.

The exception to Rule 2c (or, in other words, benefits that the Court may allow payees to retain to prevent unjust enrichment on the part of the Government) must be limited to these existing and recognized benefits if we are to uphold the policy of Republic Act No. (RA) 6758 of standardization

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9 See RA 6758; See generally, Joint Resolution No. 4, s. 2009 (JOINT RESOLUTION AUTHORIZING THE PRESIDENT OF THE PHILIPPINES TO MODIFY THE COMPENSATION AND POSITION CLASSIFICATION SYSTEM OF CIVILIAN PERSONNEL AND THE BASE PAY SCHEDULE OF MILITARY AND UNIFORMED PERSONNEL IN THE GOVERNMENT, AND FOR OTHER PURPOSES), Executive Order No. 201, s. 2016 (MODIFYING THE SALARY SCHEDULE FOR CIVILIAN GOVERNMENT PERSONNEL AND AUTHORIZING THE GRANT OF ADDITIONAL BENEFITS FOR BOTH CIVILIAN AND MILITARY AND UNIFORMED PERSONNEL), Joint Resolution No. 1, s. 2018 (JOINT RESOLUTION AUTHORIZING THE INCREASE IN BASE PAY OF MILITARY AND UNIFORMED PERSONNEL IN THE GOVERNMENT, AND FOR OTHER PURPOSES), and National Budget Circular No. 574 dated January 10, 2018 (IMPLEMENTATION OF THE INCREASE IN BASE PAY OF THE MILITARY AND UNIFORMED PERSONNEL (MUP) IN THE GOVERNMENT BEGINNING JANUARY 1, 2018, AND OTHER PROVISIONS OF CONGRESS JOINT RESOLUTION (JR) NO. 1, S. 2018).

10 Manual on Position Classification and Compensation, supra note 8.

11 See, *e.g.*, RA 11465, 2020 GAA, Volume 1-B, Sec. 41 to 59, pp. 592-597.

and maintaining compensation at reasonable levels in proportion to the national budget.

To my mind, a too expansive or broader reading of the exception in Rule 2c of "genuinely given in consideration of services rendered" will unwarrantedly dilute the import of Rule 2c because that qualification already generally applies to all allowances received by government personnel. The inclusion of the government employees' names in the agency's payroll and their rendition of regular or special services furnish the factual basis for the release of the allowances in their favor. However, there must also be legal basis for the grant of the benefits in the first place.

This qualification – *i.e.*, that there must be legal basis for the grant of the benefits in the first place, was also pointed out by Justice Henri Jean Paul B. Inting in his Concurring Opinion in *Madera*. He cogently explained:

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> The general rule remains to be holding a payee liable for a disallowed amount he has received because it violates the principle against unjust enrichment. It is only in *truly exceptional circumstances*, as shown and established by the antecedent facts, that the Court may exonerate him from the obligation. The unique exempting circumstance present in the case at bar is the onslaught of the typhoon Yolanda, which justifies the Court's appreciation of social justice considerations.
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> Also, the *ponencia* now enunciates to henceforth consider certain employee benefits as *bona fide* exceptions to the application of *solutio indebiti*, inasmuch as these were paid in exchange of services rendered.
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> Parenthetically, that a disallowed payment happened to be in the nature of employee benefits to compensate service rendered should not diminish or extinguish altogether the recipients' obligation to return. In theory, these benefits were given to compensate services rendered. However, is the payment itself supported by law? This virtual exchange of value (disbursement *vis-a-vis* service rendered by civil servant) should not be the sole consideration in upholding the payment's validity.
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> For example, merit increases are given for exemplary performance in public office. However, there are cases where the increases are excessive and totally lacking of legal basis because they were computed using a rate or factor in excess of what was provided under the law. In the computation of separation pay, there may be instances where the law clearly provides for a 1.5 multiplier and, yet, an employee nonetheless receives separation pay computed with a different one (*e.g.*, 2.0 or 2.5, etc.), simply because the board of directors or the president took the initiative to reward their employees. Furthermore, there are also instances where employees are given allowances, which were intended to be consumed as part of the performance of their official functions, but clearly in violation of the Salary Standardization Law.[12]

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[12] Concurring Opinion in *Madera v. COA*, supra note 2, at 11-12.

Madera not intended to supersede Section 12 of RA 6758

RA 6758 or the Compensation and Position Classification Act of 1989, enacted on August 21, 1989, advanced the policy of the State "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."[13] To standardize salaries by integrating various allowances received by government officials and employees into the basic pay, RA 6758 provides:

> **Section 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.
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> Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

Furthermore, RA 6758 reinforced the compliance with the CPCS by providing the repeal of Special Salary Laws.[14]

Oft-repeated by the Court,[15] the policy of Section 12 was explained in the case of *Maritime Industry Authority v. Commission on Audit*:[16]

> 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 nonintegrated allowances are specifically identified in Section 12, to wit:
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> 1. representation and transportation allowances;

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13 Sec. 2.

14 **Section 16.** ***Repeal of Special Salary Laws and Regulations.*** – 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 Presidential Decree No. 985 are hereby repealed.

15 See *Gubat Water District v. Commission on Audit*, G.R. No. 222054, October 1, 2019, pp. 9-10, *Solito Torcuator v. Commission on Audit*, G.R. No. 210631, March 12, 2019, p. 7, and *Balayan Water District v. Commission on Audit*, G.R. No. 229780, January 22, 2019, p. 5.

16 G.R. No. 185812, January 13, 2015, 745 SCRA 300.

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 nonintegrated 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.[17] (Citations omitted)

As stated, *Madera* was not intended and cannot supersede Section 12 of RA 6758. Rule 2c, as I understand and penned it, was never intended to authorize exceptions to Section 12 through jurisprudence. To interpret it broadly now would defeat the policy of standardization.

Moreover, *Madera* was also not intended and cannot dispense with the DBM action under Section 12 or the requirement of Presidential approval or provision in a presidential issuance[18] for new and additional benefits granted to government personnel. The reason for this becomes more apparent when we consider that apart from the policy of RA 6758 to standardize salaries, the law specifically states that the CPCS to be established shall be guided by the principle that the total compensation provided for government personnel must be **maintained at a reasonable level** in proportion to the national budget.[19]

The exception in Rule 2c (*i.e.*, of allowing the payees to retain the amounts they received) only seeks to prevent unjust enrichment on the part of the Government. It was not intended to cover benefits not authorized by law or those in violation of Salary Standardization laws, particularly, Section 12 of RA 6758. Stated differently, Rule 2c cannot cover new or additional allowances that were granted without compliance with legal requirements, as is involved in this case. If it were so, the rules in *Madera* including the notion of "net disallowed amount" would become a shield for unscrupulous officers who would treat government funds with *largesse* that they are free to distribute to their employees in the form of unauthorized benefits. If all these benefits are considered "in consideration of services rendered," the Government will not be able to recover any amount under the *Madera* Rules.

This is precisely why these unauthorized benefits, while they can be loosely described as "given in consideration of services rendered," cannot be considered as the exception to *solutio indebiti* under Rule 2c as they are not benefits authorized by law. Any such allowances that the Court may allow payees to retain are excused under Rule 2d on a case-to-case basis, and not under Rule 2c.

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17 Id. at 321-322.

18 DIRECTING THE CONTINUED ADOPTION OF AUSTERITY MEASURES IN THE GOVERNMENT, Administrative Order No. 103, August 31, 2004.

19 Sec. 3(c).

Application of Rule 2c

As an illustrative example of a situation covered by Rule 2c, the case of *Province of Camarines Sur v. COA*[20] (*CamSur*) is on point. In this case, Commission on Audit (COA) noted infirmities in the establishment of the extension classes and disallowed the payments made by the Province of Camarines Sur to the temporary teaching and non-teaching personnel of the Department of Education-Division of Camarines Sur hired to teach extension classes. The Court quoted therein the following violations noted by COA in its Notice of Disallowance:

> 1. The payments for allowances of locally funded teachers were in violation of the provisions of Section 272 of RA 7160 which explicitly provide that the proceeds of Special Education Fund shall be allocated for the operation and maintenance of public schools and DECS-DBM-DILG Joint Circular No. 01, s[.] of 1998 dated April 14, 1998, clarified under JC No. 01-A dated March 14, 2000 and JC No. 01-B dated June 25, 2001 which state that payments of salaries, authorized allowances and personnel-related benefits are only for hired teachers that handle new classes as extension of existing public elementary [or] secondary schools established and approved by DepEd;
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> 2. The allowances was taken up in the Special Education Fund (SEF) books as "Donations" (878) instead of taking it up to the General Fund books[;]
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> 3. No Memorandum of Agreement and Accomplishment Report attached[;]
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> 4. The payments of payrolls on JEV Nos. 200-08-10-185(1-5) and 200-08-10-188 were not approved by the Provincial Governor[;]
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> 5. The Journal Entry of Payrolls on JEV Nos. 200-08-09-165(12), 200-08-185(1-5) and 200-08-10-188 were not approved by the Provincial Accountant[;]
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> 6. The OBR on JEV No. 200-08-09-165(12) was not approved by the Provincial Budget Officer (PBO)[;]
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> 7. There were no certifications coming from the Head Teachers that the rec[i]pient-teacher indeed served in a particular school at a given time[;]
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> 8. There was no certification from the HRMO of the [p]rovince regarding the authenticity of each claim.[21]

Reflecting upon the ratiocination of an early draft that there is no competent evidence that actual services were rendered by the payees, I wrote to suggest that the principle of *solutio indebiti* be applied to require the return of the disallowed amounts not only from the approving and certifying officers,

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20 G.R. No. 227926, March 10, 2020.

21 Id. at 3.

but also from the payees themselves. After much deliberation, and relying upon the views offered by Justices Marvic M.V.F. Leonen and Amy C. Lazaro-Javier, the Court accepted the certification offered by the petitioners to prove the rendition of actual services by payees. It sought to find a way to allow payees to retain the amounts they received despite the noted infirmities that led to the disallowance. The Court ultimately held:

> Our concurrence with respondent on this point, notwithstanding, still we find that petitioner is ***not liable*** to pay for the disallowed funds.
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> Under the principle of *quantum meruit*, a person may recover a reasonable value for the thing he delivered or the service that he rendered. Literally meaning "as much as he deserves," this principle acts as a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it.
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> Here, there is no question that the Provincial Human Resource Management Officer (PHRMO) and the Schools Division Superintendent (SDS) of Camarines Sur certified that locally-funded teachers actually rendered their services for calendar year 2008.
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> While COA argues that the joint certification of the PHRMO and SDS should be rejected, as it was impossible that they personally witnessed the daily attendance of all the personnel listed in the payroll, we find such imputation of malfeasance on the part of the concerned government officials to be warrantless, baseless and contrary to the presumption of regularity in the performance of official duties. We, therefore, give weight to the certification that the concerned personnel who received the questioned allowances actually rendered services for the period stated.
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> It is apparent, based on the rulings of the COA, COA-RO V, Auditor and ATL that, the disallowance was made not because no service was rendered by the concerned recipients. Rather, it was due to the failure of petitioners to comply with the mandatory requirements of DECS-DBM-DILG JCs particularly as to: (1) the prior approval of DECS (now DepEd) Secretary of the extension classes; and (2) the recommendation of the DECS Regional Director. It is only the third requirement, certification by the division superintendent as to the necessity and urgency of establishing extension classes in the LGUs, which petitioners were able to meet.
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> In light of the principles of *quantum meruit* and unjust enrichment, we find that it would be the height of injustice if the personnel who rendered services for the period in question would be asked to return the honoraria and allowances they actually worked for, simply because the approving officers failed to comply with certain procedural requirements. By necessary implication, it would also be inequitable if the approving officers would be required to shoulder the return of the disallowed funds, even though such were given for actual service rendered.
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> In summary, we find that a reversal of the COA Decision and Resolution is in Order as petitioner, through its approving officers, is not

> liable to refund the same. Actual services were rendered by the concerned recipients, teaching and non-teaching personnel alike, and no bad faith may be imputed on the approving officers.[22] (Emphasis in the original; underscoring supplied)

The situation in *CamSur* best exemplifies, in my view, the proper situation covered by Rule 2c's exception – in that were it not for the procedural missteps committed by the approving and certifying officers in the establishment of the extension classes and the recording and approval of the payments made, the amounts paid to the teachers should not have been disallowed. Notwithstanding the infirmities, the teachers' allowances should be retained by them because they were "genuinely given in consideration of services rendered," such that their recovery would result in the Government being unjustly enriched. The rendition of actual services justifies the retention of reasonable amounts received for the said services because this is a situation not covered by *solutio indebiti.*

This is the import of the exception in Rule 2c.

The situation in *CamSur* is different from cases involving new or additional benefits that are not direct compensation for actual services rendered. For these new and additional benefits, Rule 2c ordering the return on the basis of *solutio indebiti* applies.

As applied to this case

In this case, the "incentive allowance" equivalent to 20% of basic pay disallowed in this case is not covered by the exception in Rule 2c; hence, the excuse *pro hac vice* under Rule 2d.

This incentive is not among the benefits recognized or authorized by law, and was thus properly disallowed. Given that it is not a recognized benefit and the legal requirement for its grant was not complied with, the payment to the petitioners was undue. Their situation is covered by *solutio indebiti* and no unjust enrichment results in the Government recovering the payments made.

The Resolution describes the nature of the allowances in this case as being in the nature of **dislocation allowance**. In this regard, there appears no similar provision for dislocation or displacement allowance in domestic salary laws and regulations, whether for civilian personnel or military and uniformed personnel. Hence, the "additional incentive benefit" is clearly an additional benefit that could not have been validly granted without appropriate authorization either from the Department of Budget and Management or the Office of the President or through legislative issuances. Thus, the disallowance on that ground is valid, and the return is called for under Rule 2c.

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[22] Id. at 12-15.

The unanimous main decision which affirmed the COA decision assailed by petitioners already correctly held:

> Petitioners also argue that the alleged reopening of the settled, audited accounts of petitioners with respect to the incentive allowance paid was contrary to existing audit rules; and that the subsequent disallowance was an act tainted with injustice, fraud, and bad faith. While we commend petitioners' professed dedication to their duties despite being sent to allegedly hazardous areas in order to implement the housing programs of the NHA, the law must stand.
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> In *Baybay Water District v. Commission on Audit*, this Court stated that public officers' erroneous application and enforcement of the law do not estop the government from making a subsequent correction of those errors. Where there is an express provision of 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. Practice, without more—no matter how long continued—cannot give rise to any vested right if it is contrary to law.[23]

As the grant of this additional "incentive benefit" allowance violates Section 12 of RA 6758, the Court's resolution to excuse the return in this case could only be justified by "exempting circumstance[s]"[24] cited by the *ponencia*, which are properly included under Rule 2d, and not as an exception in Rule 2c.

Accordingly, I join the *ponencia* in resolving to **PARTLY GRANT** the Motion for Reconsideration.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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[23] *Abellanosa v. Commission on Audit*, G.R. No. 185806, July 24, 2012, 677 SCRA 371, 383.

[24] To borrow the phrase of Justice Inting in his Concurring Opinion, supra note 2, at 11 in *Madera*.