



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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 JUL 13 2021
 BY: _____
 TIME: _____

EN BANC

ENGR. ALEX C. PAGUIO, in his capacity as General Manager, **ANGELINE R. AGUILAR**, Administrative Division Manager, **EDITA B. ABARQUEZ**, Board of Directors (BOD) Secretary, **MARIFEL B. PABILONIA**, BOD Chairperson, **NINA P. VELASCO**, BOD Vice Chairperson, **FRED V. CAPISTRANO**, BOD Chairman, **ANGELITO T. BOMBAY**, BOD Vice Chairman,

Petitioners,

- versus -

COMMISSION ON AUDIT (COA), and **DIRECTOR CLEOTILDE M. TUAZON**, COA Regional Director, Region IV-A,

Respondents.

G.R. No. 223547

Present:

GESMUNDO, C.J.,
PERLAS-BERNABE, S.A.J.,
LEONEN,
CAGUIOA,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
M. LOPEZ,
DELOS SANTOS,
GAERLAN,
ROSARIO, and
J. LOPEZ, JJ.

Promulgated:

April 27, 2021

X-----X

DECISION

M. LOPEZ, J.:

In this Petition for *Certiorari*¹ under Rule 64, in relation to Rule 65 of the Rules of Court, we are once again implored to exercise liberality in reviewing a final and executory judgment. Respondent Commission on Audit's (COA) Decision No. 2015-190² dated April 13, 2015 and Resolution

¹ *Rollo*, pp. 3-20.

² *Id.* at 22-25.

dated December 23, 2015 are assailed for dismissing a petition for review for being filed out of time.

Facts

Petitioners Engr. Alex C. Paguio (Paguio) and Angeline R. Aguilar (Aguilar) are officers of Pagsanjan Water District (PAGWAD), while petitioners Edita B. Abarquez, Marifel B. Pabilonia, Nina P. Velasco, Fred V. Capistrano, and Angelito T. Bombay are members of the PAGWAD Board of Directors. PAGWAD is a government-owned and controlled corporation (GOCC) organized under Presidential Decree (PD) No. 198,³ otherwise known as the "Provincial Water Utilities Act of 1973," as amended. In 2009 and 2010, the PAGWAD Board Members received several benefits pursuant to the following board resolutions that they issued, to wit: (1) Resolution No. 71⁴ dated November 19, 2009 – extra year-end financial assistance of ₱12,555.00 each; (2) Resolution No. 87⁵ dated December 29, 2009 – additional extra year-end financial assistance of ₱5,000.00 each; (3) Resolution No. 10⁶ dated February 24, 2009 – medical allowance of ₱7,500.00 each; (4) Resolution No. 31⁷ dated May 25, 2010 – anniversary bonus equivalent to one-month basic salary; and (5) Resolution No. 63⁸ dated December 7, 2010 – productivity enhancement incentive of ₱10,000.00 each. Communication allowances and loyalty award were also granted to the Board Members.⁹

On May 10, 2012, Notice of Disallowance (ND) No. 2012-100-001(09 & 10)¹⁰ was issued, disallowing the above-enumerated disbursements with an aggregate amount of ₱283,965.00 for lack of legal basis. It was found that the benefits were given to the Board Members without approval from the Local Water Utilities Administration (LWUA), in violation of Section 13¹¹ of PD No. 198, as amended, COA Resolution No. 2004-006¹² and Department of Budget and Management (DBM) regulations.

³ DECLARING A NATIONAL POLICY FAVORING LOCAL OPERATION AND CONTROL OF WATER SYSTEMS; AUTHORIZING THE FORMATION OF LOCAL WATER DISTRICTS AND PROVIDING FOR THE GOVERNMENT AND ADMINISTRATION OF SUCH DISTRICTS; CHARTERING A NATIONAL ADMINISTRATION TO FACILITATE IMPROVEMENT OF LOCAL WATER UTILITIES; GRANTING SAID ADMINISTRATION SUCH POWERS AS ARE NECESSARY TO OPTIMIZE PUBLIC SERVICE FROM WATER UTILITY OPERATIONS, AND FOR OTHER PURPOSES; signed on May 25, 1973.

⁴ *Id.* at 104-105.

⁵ *Id.* at 106-107.

⁶ *Id.* at 108-109.

⁷ *Id.* at 110-111.

⁸ *Id.* at 112-113.

⁹ *Id.* at 29.

¹⁰ *Id.* at 26-28.

¹¹ SEC. 13. *Compensation.* — Each director shall receive per diem to be determined by the Board, for each meeting of the Board actually attended by him, but no director shall receive per diems in any given month in excess of the equivalent of the total per diem of four meetings in any given month.

Any per diem in excess of One hundred fifty pesos (P150.00) shall be subject to the approval of the Administration. In addition thereto, each director shall receive allowances and benefits as the Board may prescribe subject to the approval of the Administration.

¹² GUIDELINES ON THE DISPOSITION/RESOLUTION OF APPEALS/PETITIONS FOR RECONSIDERATION OF VARIOUS DISALLOWANCES ON THE BENEFITS AND ALLOWANCES RECEIVED BY MEMBERS OF THE BOARD OF DIRECTORS, OFFICIALS AND EMPLOYEES OF WATER DISTRICTS; approved on September 14, 2004.

Petitioners were made liable to settle the disallowed transactions.¹³ They received a copy of the ND on **May 23, 2012**.¹⁴

On **November 14, 2012**, petitioners filed an Appeal Memorandum¹⁵ before the COA Regional Office No. IV-A (ROIV-A). They argued that the Board of Directors is authorized to prescribe additional allowances and benefits to its members under Section 13¹⁶ of PD No. 198, as amended by Republic Act (RA) No. 9286.¹⁷ Moreover, they claimed that the grant of year-end financial assistance was based on LWUA Board of Trustees Resolution No. 239¹⁸ dated December 20, 2005, which approved the grant of year-end financial assistance and a ₱5,000.00 cash gift to Board Members of water districts. Petitioners also cited LWUA Memorandum Circular No. 011-06¹⁹ dated August 28, 2006, which confirmed such approval; and LWUA Memorandum Circular No. 004-11²⁰ dated February 15, 2011, which allowed the release of the 2010 year-end financial assistance and ₱5,000.00 cash gift to incumbent members of water districts Board of Directors. Petitioners further cited an Inter-Office Memorandum²¹ dated April 18, 2008, signed by Atty. Ma. Elena R. Te (Atty. Te), Acting Manager of the LWUA Legal Department, alleged to have authorized the grant of the questioned benefits to the PAGWAD Board of Directors.

In Decision No. 2014-35²² dated April 15, 2014, the COA ROIV-A through respondent Director Cleotilde M. Tuazon, denied the appeal and affirmed the ND. It ruled that, in view of Executive Order (EO) No. 7²³ dated September 8, 2010, LWUA Memorandum Circular No. 015-10²⁴ dated December 7, 2010 expressly suspended the grant of the year-end financial assistance and cash gift previously authorized under LWUA Board Resolution No. 239. Section 10 of EO No. 7 was quoted, stating:

Sec. 10. Suspension of All Allowances, Bonuses and Incentives for Members of the Board of Directors/Trustees – The grant of allowances, bonuses, incentives and other perks to members of the board of

¹³ *Rollo*, p. 28.

¹⁴ *Id.* at 31

¹⁵ *Id.* at 30-37.

¹⁶ *Supra* note 11.

¹⁷ AN ACT FURTHER AMENDING PRESIDENTIAL DECREE NO. 198, OTHERWISE KNOWN AS “THE PROVINCIAL WATER UTILITIES ACT OF 1973,” AS AMENDED; approved on April 2, 2004.

¹⁸ APPROVING THE GRANT OF YEAR-END FINANCIAL ASSISTANCE AND ₱5,000.00 CASH GIFT TO INCUMBENT MEMBERS OF WATER DISTRICT BOARD OF DIRECTORS; *rollo*, p. 51.

¹⁹ GRANT OF YEAR-END FINANCIAL ASSISTANCE AND [P]5,000.00 CASH GIFT TO INCUMBENT MEMBERS OF WATER DISTRICT BOARD OF DIRECTORS PURSUANT TO RA 9286; *id.* at 52.

²⁰ IMPLICATION OF EXECUTIVE ORDER NO. 24 TO THE GRANT OF THE YEAR-END FINANCIAL ASSISTANCE AND [P]5,000.00 CASH GIFT FOR CY 2010 TO MEMBERS OF WATER DISTRICT BOARD OF DIRECTORS; *id.* at 53.

²¹ Pagsanjan WD’s Request for approval of [P]6,000.00 Medical Allowance for each BOD Member [*Per Annum*]; *id.* at 54.

²² *Id.* at 56-59.

²³ DIRECTING THE RATIONALIZATION OF THE COMPENSATION AND POSITION CLASSIFICATION SYSTEM IN THE GOVERNMENT-OWNED AND-CONTROLLED CORPORATIONS (GOCCs) AND GOVERNMENT FINANCIAL INSTITUTIONS (GFIs), AND FOR OTHER PURPOSES; signed on September 8, 2010.

²⁴ SUSPENSION OF YEAR-END FINANCIAL ASSISTANCE AND [P]5,000.00 CASH GIFT TO INCUMBENT MEMBERS OF WATER DISTRICT BOARD OF DIRECTORS.

directors/trustees of GOCCs and GFIs except reasonable per diems, is hereby suspended until December 31, 2010 pending the issuance of new policies and guidelines on the compensation of these board members.

It also ruled that LWUA Memorandum Circular No. 004-11²⁵ was overturned by LWUA Memorandum Circular No. 015-12²⁶ dated November 22, 2012, which categorically suspended the disbursement of the year-end financial assistance and ₱5,000.00 cash gift until an appropriate clearance or approval from higher authority is obtained. Thus, the appeal disposed:

Viewed in the light of the foregoing, the herein Appeal is **DENIED**. Accordingly, Notice of Disallowance No. 2012-100-001(09&10) dated May 10, 2012, amounting to ₱283,965.00 is **AFFIRMED**.²⁷ (Emphasis in the original.)

On **April 23, 2014**, petitioners received a copy of Decision No. 2014-35.²⁸ They filed a Petition for Review²⁹ before the COA Proper on **April 30, 2014** reiterating their arguments, but it was denied in Decision No. 2015-190³⁰ dated April 13, 2015 for being filed out of time:

WHEREFORE, foregoing premises considered, the petition for review is hereby **DISMISSED** for having been filed out of time. Accordingly, Commission on Audit Regional Office No. IV-A Decision No. 2014-35 dated April 15, 2014, which affirmed Notice of Disallowance No. 2012-100-001 (09&10) dated May 10, 2012, on the payment of various allowances and benefits to the Members of the Board of Directors of Pagsanjan Water District for the years 2009 and 2010 in the total amount of [₱]283,965.00, is **FINAL AND EXECUTORY**.³¹ (Emphasis in the original.)

Undaunted, petitioners sought reconsideration, but were likewise denied in the COA Proper's Resolution dated December 23, 2015. The Notice³² of the denial reads:

The [COA Proper] denied the motion for reconsideration. The assailed Decision correctly held that COA Regional Office IV-A Decision No. 2014-35 dated April 15, 2014 has attained finality, and is thus, immutable and unalterable and may no longer be modified in any respect.³³

Hence, this Petition.

²⁵ *Supra* note 20.

²⁶ REVISED GUIDELINES ON THE COMPENSATION OF WATER DISTRICT DIRECTORS AND OTHER BENEFITS PURSUANT TO EO 65; *rollo*, pp. 118-120.

²⁷ *Id.* at 59.

²⁸ *Id.* at 5.

²⁹ *Id.* at 60-71.

³⁰ *Id.* at 22-25.

³¹ *Id.* at 24.

³² *Id.* at 21.

³³ *Id.*

Issues

- I. Whether the COA Proper committed grave abuse of discretion in dismissing petitioners' Petition for Review for being filed out of time; and
- II. Whether the COA Proper committed grave abuse of discretion in sustaining the ND No. 2012-100-001(09 & 10).

Ruling

We dismiss the Petition.

No less than the Constitution vested the COA, as the guardian of public funds, with enough latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds. In the exercise of its constitutional duty, the COA is accorded plenary discretion, and the Court generally sustains its decisions in recognition of its expertise in the laws it is entrusted to enforce. Only when the COA acts without or in excess of jurisdiction or with grave abuse of discretion may the Court grant a petition assailing the COA's actions. There is grave abuse of discretion only when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism.³⁴ This complements the limited scope of the Court's review under the extraordinary remedy of *certiorari*, wherein the Court is confined solely to questions of jurisdiction whenever a tribunal, board or officer exercising judicial or quasi-judicial function acts without jurisdiction or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.³⁵ As will be explained, no such grave abuse of discretion was shown in this case to warrant the reversal or modification of the assailed COA decision.

Finality of COA ROIV-A Decision No. 2014-35

The 2009 Revised Rules of Procedure of the COA prescribed a period of six months or 180 days from receipt of the ND to appeal an auditor's decision to the regional director up to the COA Proper.³⁶ **Petitioners admit**

³⁴ *Technical Education and Skills Development Authority (TESDA) v. Commission on Audit*, 729 Phil. 60, 72-73 (2014).

³⁵ See *Abpi v. Commission on Audit* (Resolution), G.R. No. 252367, July 14, 2020.

³⁶ Rule IV, SEC. 8. *Finality of the Auditor's Decision*. – Unless an appeal to the Director is taken, the decision of the Auditor shall become final upon the expiration of six (6) months from the date of receipt thereof.

x x x x

Rule V, SEC. 4. *When Appeal Taken*. – An Appeal must be filed within six (6) months after receipt of the decision appealed from.

x x x x

that their appeal before the COA Proper was filed beyond this reglementary period.³⁷ They received the ND on May 23, 2012 and filed an appeal to the COA ROIV-A on November 14, 2012 or after 175 days. They received the COA ROIV-A Decision No. 2014-35 on April 23, 2014. Thus, they had the remaining five days of the 180-day period from April 23, 2014 or until April 28, 2014 to file an appeal to the COA Proper. Without any explanation, however, they filed their Petition for Review before the COA Proper on April 30, 2014, which is two days late.

Section 51 of PD No. 1445³⁸ or the “Government Auditing Code of the Philippines” states that “[a] decision of the Commission or of any auditor upon any matter within its or his jurisdiction, if not appealed [in accordance with the COA’s rules of procedure,] shall be final and executory.” A party to an original action who fails to question an adverse judgment or decision by not filing the proper remedy within the period prescribed by law, loses the right to do so, and the judgment or decision, as to him or her, becomes final and binding.³⁹ The decision becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law.⁴⁰ This doctrine of immutability is grounded upon the fundamental principles of public policy and sound practice that, at the risk of occasional error, the judgment of courts and quasi-judicial agencies must become final at some definite date fixed by law.⁴¹ Thus, no grave abuse of discretion can be imputed against the COA in dismissing petitioners’ Petition for Review for being filed beyond the reglementary period.

Petitioners, however, entreat this Court to exercise leniency in the application of procedural rules and to resolve the case on the merits. Time and again, we have been reminded that procedural rules should be treated with utmost respect and due regard because they are precisely designed to effectively facilitate the administration of justice. For this reason, we have always taken precaution in exercising such liberality as we may do so only for the most compelling reasons, when stubborn obedience to the procedure would defeat rather than serve the ends of justice. To rule otherwise would

Rule V, SEC. 5. *Interruption of Time to Appeal.* – The receipt by the Director of the Appeal Memorandum shall stop the running of the period to appeal which shall resume to run upon receipt by the appellants of the Director’s decision.

x x x x

Rule VII, SEC. 3. *Period of Appeal.* – The appeal shall be taken within the time remaining of the six (6) months period under Section 4, Rule V, taking into account the suspension of the running thereof under Section 5 of the same Rule in case of appeals from the Director’s decision, x x x.

³⁷ *Rollo*, p. 6.

³⁸ ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES; approved on June 11, 1978.

³⁹ *Ocampo v. CA (Former 2nd Division)*, 601 Phil. 43, 49 (2009).

⁴⁰ See *Philippine Health Insurance Corporation v. Commission on Audit*, G.R. No. 222710, September 10, 2019; *Orlina v. Ventura*, G.R. No. 227033, December 3, 2018; *Philippine Health Insurance Corporation v. Commission on Audit*, G.R. No. 222838, September 4, 2018; and *Republic v. Heirs of Cirilo Gotengco*, 824 Phil. 568, 578 (2018).

⁴¹ *Team Pacific Corporation v. Daza*, 690 Phil. 427, 441 (2012).

trivialize the time-honored principle of adherence to the procedural rules.⁴² It is essential, thus, that every plea for the Court's exercise of liberality should be accompanied by a justification that speaks of strong substantial justice considerations.⁴³ Here, there is no compelling reason to relax the rules. For one, petitioners did not give any explanation as to why they failed to comply with the procedural rules. Also, they merely harped on the "grievous effect" of the COA's adverse decision to their families considering their "meager income and personal loans." To be sure, general averments of social justice concepts would not suffice to warrant deviation from established rules and principles on immutability of final judgments as every litigant can conveniently allege injustice from every adverse decision.

Propriety of the Disallowance

In any case, even if we forego the procedural rules and resolve the case on the merits, petitioners still failed to show that the COA acted with grave abuse of discretion in sustaining the ND.

Petitioners argue that the Board of Directors derived its authority to grant additional allowances to its members from Section 13 of PD No. 198, as amended by RA No. 9286,⁴⁴ and then cite the following LWUA issuances to support their claim that the grants of the questioned additional allowances to the PAGWAD Board Members were with the LWUA approval, to wit: LWUA Board of Trustees Resolution No. 239⁴⁵ dated December 20, 2005; LWUA Memorandum Circular No. 011-06⁴⁶ dated August 28, 2006; LWUA Memorandum Circular No. 004-11⁴⁷ dated February 15, 2011; and Inter-Office Memorandum⁴⁸ dated February 18, 2008, signed by Atty. Te of the LWUA Legal Department. We are not persuaded.

Section 13 of PD No. 198, as amended by RA No. 9286,⁴⁹ provides:

Sec. 13. *Compensation.* – Each director shall receive per diem to be determined by the Board, for each meeting of the Board actually attended by him, but no director shall receive per diems in any given month in excess of the equivalent of the total per diem of four meetings in any given month.

Any per diem in excess of One hundred fifty pesos (₱150.00) shall be subject to the approval of the Administration. In addition thereto, **each director shall receive allowances and benefits as the Board may prescribe subject to the approval of the Administration.** (Emphasis supplied.)

⁴² *Republic v. Heirs of Cirilo Gotengco*, *supra* note 40, at 584.

⁴³ *Binga Hydroelectric Plant, Inc. v. Commission on Audit*, 836 Phil. 46, 54 (2018).

⁴⁴ *Supra* note 17.

⁴⁵ *Supra* note 18.

⁴⁶ *Supra* note 19.

⁴⁷ *Supra* note 20.

⁴⁸ *Supra* note 21.

⁴⁹ *Supra* note 17.

Indeed, Section 13 authorized the Board of Directors to prescribe additional allowances to its members. However, the Board of Directors does not have unbridled power to grant additional allowances for themselves as Section 13 explicitly requires the LWUA's approval for such grants. On this score, we agree with the COA that the PAGWAD Board of Directors did not comply with the required LWUA approval. We cannot sympathize with petitioners' argument that the cited LWUA issuances legitimized the grant of the challenged benefits given to the PAGWAD Board Members.

Firstly, LWUA Resolution No. 239 dated December 20, 2005 reads:

WHEREAS, [RA] No. 9286, specifically amended Section 13 of PD No. 198 and thereby, authorized the [LWUA] to approve the grant of additional benefits to incumbent members of Water District (WD) Board of Directors;

X X X X

NOW, THEREFORE, BE IT RESOLVED, as it is hereby resolved, to approve the grant of Year-End Financial Assistance and [P]5,000.00 Cash Gift to incumbent members of Water District (WD) Board of Directors, similar to the Christmas Bonus and Cash Gift of regular WD officials and employees. **Provided, that the computation of said benefit shall be equivalent to the total per diems of four (4) meetings in a month plus [P]5,000.00 cash gift**, and to be funded out of savings from the WD budget;

RESOLVED, Further, that this authorization shall likewise extend to similar year-end benefits already granted to members of WD Board of Directors after the effectivity of [RA] No. 9286[.]⁵⁰ (Emphases supplied.)

On the other hand, LWUA Memorandum Circular No. 011-06 dated August 28, 2006, merely confirmed that LWUA Resolution No. 239 approved the grant of year-end financial assistance and cash gift to incumbent Board Members of water districts.

These issuances cannot be considered as a legitimate approval of the grant of year-end financial assistance and cash gift because in 2004, or more than a year **before** the issuance of LWUA Resolution No. 239 in 2005, Administrative Order (AO) No. 103⁵¹ was already in effect, expressly suspending the grant of new and additional benefits to all GOCC officials and employees to implement austerity measures in the government, *viz.*:

SEC. 3. All NGAs, SUCs, GOCCs, GFIs and OGCEs, whether exempt from Salary Standardization Law or not, are hereby directed to:

⁵⁰ *Supra* note 18.

⁵¹ DIRECTING THE CONTINUED ADOPTION OF AUSTERITY MEASURES IN THE GOVERNMENT; approved on August 31, 2004.

x x x x

(c) For other non[-]full-time officials and employees, including members of their governing boards, committees, and commissions: **(i) suspend the grant of new or additional benefits, such as but not limited to per diems, honoraria, housing and miscellaneous allowances, or car plans;** and (ii) in the case of those receiving per diems, honoraria and other fringe benefits in excess of Twenty Thousand Pesos ([P]20,000.00) per month, reduce the combined total of said per diems, honoraria and benefits to a maximum of Twenty Thousand Pesos ([P]20,000.00) per month. (Emphasis supplied.)

To be sure, the LWUA Board of Trustees, as well as water districts Board of Directors, cannot ignore this clear directive from the Chief Executive that applies to the national government, its agencies, and instrumentalities, as well as to all GOCCs, government financial institutions, and other government corporate entities.⁵² Otherwise, they will undermine the President's constitutionally-vested power of control and supervision over all the executive departments, bureaus, and offices,⁵³ which includes GOCCs such as the LWUA and local water districts. Simply put, petitioners and the LWUA erred in granting and approving the year-end financial assistance and cash gift to water district Board Members as it patently contravened AO No. 103.

In any case, assuming that LWUA Resolution No. 239 is upheld, the grants are still infirm because petitioners failed to allege, much less prove, that the year-end financial assistance and cash gift given to their Board Members in 2009 did not go beyond the threshold provided under LWUA Resolution No. 239, *i.e.*, equivalent to the total *per diems* of four meeting in a month, exclusive of the P5,000.00 cash gift.⁵⁴

Secondly, LWUA Memorandum Circular No. 004-11⁵⁵ dated February 15, 2011 states:

In view of the explicit pronouncement under Section 5 of E.O. No. 24 that "*separate rules*" shall be issued for the purpose, and in the meantime that such rules are not yet in place, it is therefore implied that **the CY 2010 Year-End Financial Assistance and the [P]5,000.00 cash gift, authorized pursuant to LWUA Board Resolution No. 239, s. 2005, implementing R.A. No. 9286 may now be released.**⁵⁶ (Emphasis supplied.)

This LWUA issuance cannot also be invoked as the requisite LWUA approval because it specifically involved the release of the **2010** year-end financial assistance and cash gift. The issue here relates to the year-end

⁵² AO No. 103 (2004), Sections 1 and 3; See *Executive Director Casal v. Commission on Audit*, 538 Phil. 634, 644 (2006).

⁵³ CONSTITUTION, ART. VII, SEC. 17.

⁵⁴ *Supra* note 18.

⁵⁵ *Supra* note 20.

⁵⁶ *Id.*

financial assistance and cash gift granted to the PAGWAD Board Members for **2009**. Clearly, there is no valid LWUA approval for the 2009 year-end financial assistance and cash gift.

Lastly, petitioners did not present any authority for the grant of medical allowances, anniversary bonuses, productivity enhancement incentives, communication allowances, and loyalty award to the PAGWAD Board Members. The Inter-Office Memorandum⁵⁷ dated April 18, 2008, signed by Atty. Te of the LWUA Legal Department, can hardly be considered as the required LWUA approval for the grant of these benefits. Atty. Te wrote:

This pertains to your Brief dated 11 April 2008 requesting **our opinion** as to the legal basis of the **grant of [P]6,000.00 per annum medical allowance** for each Board member as requested by the [PAGWAD] per Board Resolution No. 08 Series of 2008.

Please be informed that pursuant to Section 13 of P.D. 198, as amended, by R.A. No. 9286, **the LWUA [Board of Trustees] may consider** the same as part of the [water district] Board of Directors benefits[,] but only applicable to those Directors who are receiving less than [P]20,000.00 per diem a month. Such that, the total amount to be received by each director including other benefits and allowances should not exceed [P]20,000.00 a month in the light of [AO] No. 103 stating that “[i]n the case of those receiving per diem, honoraria and other fringe benefits in excess of Twenty Thousand Pesos ([P]20,000.00) per month, reduce the combined total of said per diem, honoraria and benefits to a maximum of Twenty Thousand Pesos ([P]20,000.00) per month.”

For your information and guidance.⁵⁸ (Emphases supplied.)

This Memorandum noticeably did not address the other questioned benefits aside from the P6,000.00-medical allowance requested by PAGWAD in 2008. The P7,500.00-grant of medical allowance under PAGWAD Board Resolution No. 10⁵⁹ clearly went beyond the requested amount. The clear language of the Memorandum shows that it was merely a recommendation from the LWUA Legal Department that the LWUA **may approve** the grant of the requested medical allowance provided it **does not exceed the limit under AO No. 103**. In other words, the Inter-Office Memorandum is *not* an LWUA approval that could validate the various grants in this case.

In sum, the COA Proper did not commit grave abuse of discretion in upholding the disallowance of all the additional benefits and allowances given to the PAGWAD Board Members for lack of legal basis.

⁵⁷ *Supra* note 21.

⁵⁸ *Id.*

⁵⁹ *Supra* note 6.

Liability to Refund the Disallowed Amounts

As to petitioners' liability to settle the disallowed amounts, we reiterate that the COA ROIV-A Decision, sustaining the validity of the ND, has already attained finality due to petitioners' failure to timely file an appeal. It is well-settled in our jurisdiction that a judgment that lapses into finality becomes immutable and unalterable.⁶⁰ Consequently, a discussion on petitioners' alleged good faith is rendered immaterial. As approving and certifying officers of the disallowed benefits, petitioners are liable to settle the unauthorized disbursements, consistent with our recent ruling in *Madera v. Commission on Audit*,⁶¹ wherein we clarified the extent of liability of the participants in disallowed transactions.

In *Madera*, we cited Section 43 of the Administrative Code of 1987,⁶² which states that “**every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.**”⁶³ Section 38,⁶⁴ Chapter 9, Book I of the Administrative Code explains that such civil liability of the officers is grounded upon the showing of bad faith, malice, or gross negligence in the performance of their official duties. In this case, the COA auditor aptly observed that the PAGWAD Board of Directors, as well as its General Manager and Administrative Division Manager, patently violated the clear directives of its own charter PD No. 198, as amended by RA No. 9286, and AO No. 103. By jurisprudence, the palpable disregard of laws, prevailing jurisprudence, and other applicable directives amounts to gross negligence, which betrays the presumption of good faith and regularity in the performance of official functions enjoyed by public officers.⁶⁵ Hence, the COA Proper correctly held Paguio and Aguilar liable despite not being recipients of the disallowed benefits. In the same vein, the Board Members who granted various benefits unto themselves in contravention of the aforecited laws and issuances are solidarily liable to refund the unauthorized benefits that they received.

FOR THE STATED REASONS, the Petition is DISMISSED. The Commission on Audit Decision No. 2015-190 dated April 13, 2015 and

⁶⁰ See *Republic v. Heirs of Cirilo Gotengco*, *supra* note 40, at 578.

⁶¹ G.R. No. 244128, September 8, 2020.

⁶² EO No. 292, INSTITUTING THE “ADMINISTRATIVE CODE OF 1987,” signed on July 25, 1987.

⁶³ Emphasis supplied.

⁶⁴ SEC. 38. *Liability of Superior Officers.* — (1) A public officer shall not be **civily liable** for acts done in the performance of his official duties, unless there is a clear showing of **bad faith, malice or gross negligence.**

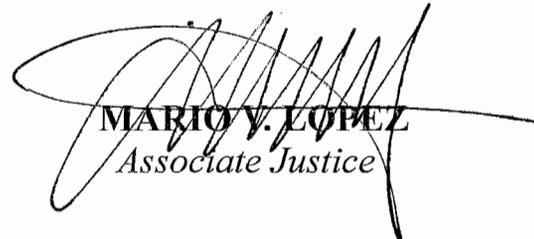
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(3) A head of a department or a superior officer shall not be civily liable for the wrongful acts, omissions of duty, negligence, or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of. (Emphasis supplied.)

⁶⁵ See *Metropolitan Waterworks and Sewerage System v. Commission on Audit*, 821 Phil. 117, 140 (2017); *Tetangco, Jr. v. Commission on Audit*, 810 Phil. 459, 467 (2017).

Resolution dated December 23, 2015 are **AFFIRMED**. Petitioners, as approving and certifying officers, are solidarily liable to return the disallowed amounts.

SO ORDERED.

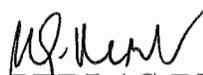


MARIO V. LOPEZ
Associate Justice

WE CONCUR:



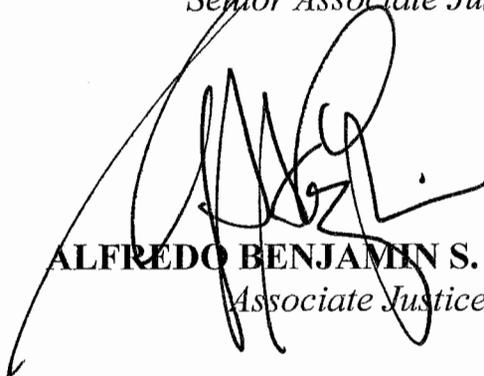
ALEXANDER G. GESMUNDO
Chief Justice



ESTELA M. PERLAS-BERNABE
Senior Associate Justice



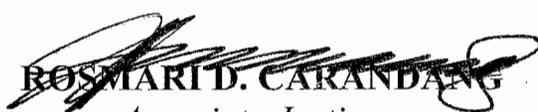
MARVIC M.V. F. LEONEN
Associate Justice



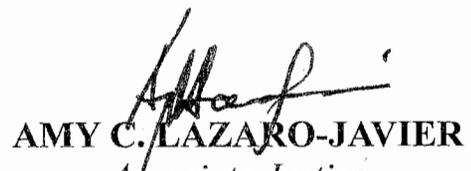
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice



ROSMARID. CARANDANG
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice



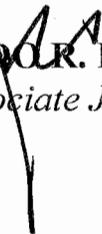
RODIL V. ZALAMEDA
Associate Justice



EDGARDO L. DELOS SANTOS
Associate Justice



SAMUEL H. GAERLAN
Associate Justice



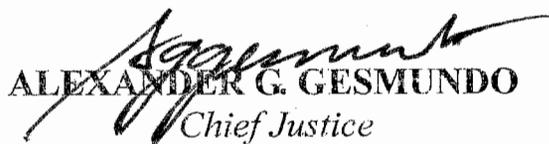
RICARDO R. ROSARIO
Associate Justice



JHOSEP V. LOPEZ
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.



ALEXANDER G. GESMUNDO
Chief Justice