



Republic of the Philippines
Supreme Court
Manila

EN BANC

GENEROSO ABELLANOSA,
CARMENCITA D. PINEDA,
BERNADETTE R. LAIGO, MENELIO
D. RUCAT, and DORIS A. SIAO,
Petitioners,

G.R. No. 185806

Present:

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

- versus -

COMMISSION ON AUDIT and
NATIONAL HOUSING AUTHORITY,
Respondents.

Promulgated:

JULY 24, 2012 *[Signature]*

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DECISION

SERENO, J.:

This is a Petition for Review on Certiorari under Rule 64 of the Rules of Court, seeking to annul Commission on Audit (COA) Decision No. 2008-102 dated 24 October 2008,¹ which affirmed the disallowance of the Incentive Allowance involved herein amounting to ₱401,284.39.

* On official leave.

** On leave.

*** On official business.

¹ Issued by COA Chairperson Reynaldo A. Villar and Commissioner Juanito G. Espino, Jr., *rollo*, pp. 46-54.

Statement of the Facts and of the Case

On 31 July 1975, Presidential Decree No. (P.D.) 757 was enacted, creating the National Housing Authority (NHA) and defining its powers and functions, among others. Section 10 thereof provides:

Section 10. *Organizational Structure of the Authority.* The Board shall determine the organizational structure of the Authority in such manner as would best carry out its powers and functions and attain the objectives of this Decree.

The General Manager shall, subject to the approval of the Board, determine and appoint the subordinate officers, other personnel, and consultants, if necessary, of the Authority: Provided, That **the regular, professional and technical personnel of the Authority shall be exempt from the rules and regulations of the Wage and Position Classification Office** and from the examination and/or eligibility requirement of the Civil Service Commission. Subject to the approval of the Board, **the General Manager shall likewise determine the rates of allowances, honoraria and such other additional compensation which the authority is hereby authorized to grant to its officers, technical staff and consultants, including the necessary detailed personnel.** (Emphasis supplied.)

On 22 August 1976, P.D. 985, entitled “A Decree Revising the Position Classification and Compensation Systems in the National Government, and Integrating the Same,” was enacted. Section 2 thereof provides:

Section 2. *Declaration of Policy.* It is hereby declared to be the policy of the national government 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. In determining rates of pay, due regard shall be given to, among others, prevailing rates in private industry for comparable work. For this purpose, there is hereby established a system of compensation standardization and position classification in the national government for all departments, bureaus, agencies, and offices including government-owned or controlled corporations and financial institutions: Provided, That **notwithstanding a standardized salary system established for all employees, additional financial incentives may be established by government corporation[s] and financial institutions for their employees to be supported fully from their corporate funds** and for such technical positions as may be approved by the President in critical government agencies. (Emphasis supplied.)

On 11 June 1978, however, P.D. 1597 was enacted, otherwise known as “Further Rationalizing the System of Compensation and Position Classification in the National Government.” Sections 3 and 5 thereof read:

Section 3. *Repeal of Special Salary Laws and Regulations.* All laws, decrees, executive orders and other issuances or parts thereof, that exempt agencies from the coverage of the National Compensation and Position Classification System as established by P.D. No. 985 and P.D. No. 1285, or which authorize and fix position classification, salaries, pay rates/ranges or allowances for specified positions, to groups of officials and employees, or to agencies, that are inconsistent with the position classification or rates in the National Compensation and Position Classification Plan, are hereby repealed.

x x x

x x x

x x x

Section 5. *Allowances, Honoraria, and Other Fringe Benefits.* Allowances, honoraria and other fringe benefits which may be granted to government employees, whether payable by their respective offices or by other agencies of government, shall be subject to the approval of the President upon recommendation of the Commissioner of the Budget. For this purpose, the Budget Commission shall review on a continuing basis and shall prepare, for the consideration and approval of the President, policies and levels of allowances and other fringe benefits applicable to government personnel, including honoraria or other forms of compensation for participation in projects which are authorized to pay additional compensation.

On 23 June 1982, the Board of Directors of the NHA issued Resolution No. 464, granting additional incentive benefits to its project personnel. Resolution No. 464 provides in relevant part:

RESOLVED, that to encourage personnel particularly those in the technical/professional category to seek assignment with the projects and once there, to make them want to stay in the organization, the grant of additional Incentive Benefits to project personnel, to wit:

- A. Personnel from one Region assigned to another Region (e.g. Metro Manila to Visayas or Mindanao):
 - 1. Incentive Allowance equivalent to 20% of basic pay.
 - 2. Air Fare (once a quarter).
 - 3. Flight Insurance (Not more than ₱10.00 premium per flight)
 - 4. Staff Housing.
- B. Personnel assigned to Project in a Region within which he is residing (e.g. Metro Manila Staff assigned to ZIP Project within Metro Manila):

Incentive Allowance equivalent to 10% of basic pay.

be as it is hereby, approved, subject to availability of funds and implementing guidelines to be issued by Management.²

Resolution No. 464 was implemented through Memorandum Circular No. 331 dated 17 August 1984,³ issued by Mr. Gaudencio V. Tobias, NHA General Manager.

On 1 July 1989, Republic Act No. (R.A.) 6758, otherwise known as the Compensation and Position Classification Act of 1989, was enacted, rationalizing the salaries of government employees. Sections 12 and 16 of R.A. 6758 provide:

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.

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.

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X X X

X X X

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.

On 2 October 1989, the Department of Budget and Management (DBM) issued Corporate Compensation Circular (CCC) No. 10,

² *Rollo*, p. 67.

³ *Id.* at 89-92.

implementing R.A. 6758. Sections 5.4 and 5.5 of CCC No. 10 enumerate the allowances and fringe benefits that are allowed to be granted even after 1 July 1989, provided that in the case of allowances mentioned under Section 5.5, the grant thereof is with appropriate authorization either from the DBM or the Office of the President, or through legislative issuances. Without the said authorization, payment made for the allowances or fringe benefits after 1 July 1989 shall be considered as illegal disbursement of public funds.

Consequently, the Officer-in-Charge, COA-NHA, issued a Memorandum dated 5 December 1990, informing the NHA management that the payment of the incentive allowance should be discontinued. On 25 January 1991, the then NHA General Manager issued a Memorandum⁴ declaring the termination of payment of incentive and housing allowances.

On 12 August 1998, this Court, in *De Jesus v. Commission on Audit*,⁵ declared CCC No. 10 ineffective for lack of publication in the *Official Gazette* or in a newspaper of general circulation. Subsequently, the NHA resumed payment of the incentive allowance to its employees, including petitioners, for the period February 1994 to December 1999, based on NHA Resolution No. 464 and Memorandum Circular No. 331. The total payments amounted to ₱808,645.90, broken down as follows:

Generoso P. Abellanos	₱204,407.80
Bernadette R. Laigo	178,494.20
Carmencita D. Pineda	171,216.30
Menelio D. Rucat	93,310.60
Doris A. Siao	161,217.00

As the aforesaid amount did not yet constitute the maximum of 20% of their basic pay as authorized under NHA Resolution No. 464, petitioners filed their claims for payment of ₱1,003,210.96 covering the balance for the

⁴ Id. at 118.
⁵ 355 Phil. 584 (1998).

period February 1994 to December 1999.⁶ This move prompted the NHA Head Office, in a letter dated 10 September 2001, to seek the opinion of the COA-NHA on the legality of the claim for payment of incentive allowance differential. However, pending receipt of the opinion, the NHA Project Office in Iligan City paid, on 19 September 2001, the amount of ₱100,321.10 representing the first tranche of the balance of the incentive allowance. This transaction was passed in audit by Auditor Agapito Generelao, Jr.

On 18 September 2001, the Assistant Corporate Auditor/Officer-in-Charge, COA-NHA, issued an adverse opinion relative to the payment of the incentive allowance. Consequently, the NHA General Manager issued a Memorandum dated 25 September 2001, stating that the payment of the said allowance would be held in abeyance. Nonetheless, the NHA Field Office proceeded to pay, on 20 February 2003, the second tranche of the incentive allowance amounting to ₱300,963.29, for a total of ₱401,284.39 for both payments. The payment was again passed in audit by Mr. Benito S. Napoles, Jr., Audit Team Leader. On 29 June 2004, Atty. Jose M. Agustin, State Auditor, COA-NHA, issued a letter⁷ to the Officer-in-Charge of the NHA, reiterating the adverse opinion on the payment of the incentive allowance.

On 16 July 2004, Atty. Agustin issued Audit Observation Memorandum (AOM) No. 2004-07-115. He noted therein that the payments had no legal authority, because the power granted to the boards of government-owned or -controlled corporations (GOCCs) and government financial institutions (GFIs) – a power granted by their charters, which allowed them to fix, determine and authorize the grant of compensation— had already been repealed by Section 3 of P.D. 1597 dated 11 June 1978; and that the allowances, honoraria and other fringe benefits granted through

⁶ *Rollo*, p. 68.

⁷ *Id.* at 72-73.

GOCC/GFI Board Resolutions without the confirmation of the DBM or the Office of the President prior to the effectivity of R.A. 6758 cannot be allowed to continue, since these do not fall within the purview of appropriate authorization under R.A. 6758.

Consequently, the Legal and Adjudication Office (LAO)-Corporate disallowed the total amount of ₱401,284.39 under Notice of Disallowance (ND) No. NHA-2005-001 (01 and 03) dated 24 January 2005.⁸ The Notice found the following persons liable: (1) Generoso C. Abellanos, District Manager, for approving the transaction, signing the check, and being the payee; (2) Bernadette R. Laigo, Finance Officer, for certifying that the expenses were necessary, lawful, and incurred under her direct supervision; and for certifying the adequacy of the documentary attachments, fund availability, propriety of the expenditures, and her being the payee; and (3) all the payees, namely, Jerry R. Baviera, Carmencita D. Pineda, Menelio D. Rucat, and Doris A. Siao.

On appeal, the Adjudication and Settlement Board (ASB) of the COA affirmed the disallowance under ASB Decision No. 2007-025 dated 10 April 2007,⁹ stressing that the power of the boards of the GOCCs and GFIs to grant compensation and incentives had already been repealed by Section 3 of P.D. 1597. Thus, the ASB ruled that NHA Resolution No. 464 was defective for having no legal basis. Further, the ASB also stated that R.A. 6758 effectively repealed all laws, decrees, executive orders, corporate charters and other issuances or parts thereof that exempted agencies from the coverage of the system.

⁸ Id. at 64-66.

⁹ Id. at 55-63; issued by Assistant Commissioners Elizabeth S. Zosa, Emma M. Espina, Carmela S. Perez, Jaime P. Naranjo, and Amorsonia B. Escarda.

Dissatisfied with the ASB's Decision, petitioners filed an appeal with the COA proper. On 24 October 2008, the COA issued its Decision No. 2008-102, affirming the disallowance and denying the appeal.

Hence, this Petition.

Petitioners raise the following issues:

1. Whether or not the grant of incentive benefits/ allowances under Board Resolution 464 is incidental to the express power granted by law to the Board of Directors under Presidential Decree 757; rendering the grant of the benefits/allowance[s] couched with legal authority.

2. Whether or not Presidential Decree No. 985 effectively repealed Section 10 of Presidential Decree No. 757 insofar as the determination of rates of allowance, honoraria and such other additional compensation which the [A]uthority is authorized to grant to its officers, technical staff and consultant including the necessary detailed personnel considering the exception provided for in Section 2 of Presidential Decree No. 985 which retained the same power to be exercised by government corporations.

3. Whether or not Presidential Decree No. 1597 repealed the exception contained in Section 2 of Presidential Decree No. 985 which retained for government corporations the power to establish and give additional financial incentives to their employees when the specified coverage of PD 1597 was only with respect to Section 4 of Presidential Decree No. 985.

4. Whether or not the incentive benefits/ allowances granted to the petitioners by virtue of NHA Board Resolution No. 464 is within the contemplation of Republic Act 6758.

5. Assuming without granting that it is within the contemplation of Republic Act 6758, whether or not the incentive benefits/allowances granted under Board Resolution No. 464 fall under the exception of the law in the light of the republished DBM Corporate Compensation Circular No. 10 as well as Corporate Compensation Circular No. 12.

6. Whether or not finally settled accounts [can] be reopened validly without prior authorization of the COA Chairman as required by the COA rules and regulations.

7. Whether or not the disallowance of the incentive benefits/allowances [is] an act of injustice, fraud, bad faith and a disorderly conduct after the services were actually rendered and the realization of the purpose for which the services were poured were achieved to the benefit of the government.¹⁰

¹⁰ Id. at 21-22.

On 27 January 2009, this Court issued a Resolution requiring, among others, respondents to file their Comment on the Petition, and petitioners to comply with certain requirements of the Rules of Court with respect to filing a petition for review.

On 21 May 2009, respondents, through the Office of the Solicitor General, filed their Comment on the Petition. They posited the following arguments: (1) Resolution No. 464, granting additional incentive allowances to certain NHA personnel, was not allowed under either P.D. 1597 or R.A. 6758; (2) petitioners' claim that the disallowance of the incentive benefits was harsh and unjust was speculative and gratuitous; (3) COA was not estopped from questioning, in the process of post-audit, the previous acts of its officials. Where there is an express provision of law prohibiting the grant of certain benefits, the law must still be enforced even if it prejudices certain parties because of an error committed by a public official in granting the benefit.

On 9 June 2009, this Court issued a Resolution requiring petitioners' counsel to show cause why he should not be disciplinarily dealt with for his failure to comply with its 27 January 2009 Resolution. On 23 June 2009, it issued another Resolution noting the Comment and requiring petitioners to file their Reply thereto. In its 24 November 2009 Resolution, it imposed a fine of ₱1,000 upon petitioners' counsel for failure to comply with the show-cause Resolution of 9 June 2009.

On 23 March 2010, this Court issued a Resolution which, among others, dismissed the Petition for the failure of petitioners to file a Reply as required under the 23 June 2009 Resolution.

On 14 May 2010, petitioners filed a Motion for Reconsideration of the 23 March 2010 Resolution, stating that they had no intention of disobeying

this Court, and were instead refraining from filing a Reply to the Comment, as they would just be substantially repeating what they had already previously stated in their Petition. On 1 June 2010, they filed a Supplemental to Petitioners' Motion for Reconsideration.

On 22 June 2010, this Court issued a Resolution granting the Motion for Reconsideration and reinstating the Petition.

The Court's Ruling

We find the Petition to be without merit.

The issuance of Resolution No. 464 by the NHA was without legal basis. At the time of its issuance in 1982, Section 3 of P.D. 1597 had already expressly repealed all decrees, executive orders, and issuances that authorized the grant of allowances to groups of officials or employees despite the inconsistency of those allowances with the position classification or rates indicated in the National Compensation and Position Classification Plan.

Petitioners' contention that P.D. 1597 only repealed Section 4 of P.D. 985, but not Section 2 thereof, is without basis. While Section 2 of P.D. 1597 only mentions Section 4 of P.D. 985, Section 3 of P.D. 1597 specifically refers to all inconsistent laws or issuances.

Thereafter, or in 1989, R.A. 6758 further reinforced this policy by expressly decreeing that all allowances not specifically mentioned therein, or as may be determined by the DBM, shall be deemed included in the standardized salary rates prescribed.

Under Section 12 of R.A. 6758, all kinds of allowances are integrated in the standardized salary rates. Below are the exceptions:

1. Representation and transportation allowance (RATA);
2. Clothing and laundry allowance;
3. Subsistence allowance of marine officers and crew on board government vessels;
4. Subsistence allowance of hospital personnel;
5. Hazard pay;
6. Allowances of foreign service personnel stationed abroad; and
7. Such other additional compensation not otherwise specified herein as may be determined by the DBM.

Only those additional compensation benefits being received by incumbents as of 1 July 1989, which were not integrated into the standardized salary rates, shall continue to be authorized.

In this case, the incentive allowances granted under Resolution No. 464 are clearly not among those enumerated under R.A. 6758. Neither has there been any allegation that the allowances were specifically determined by the DBM to be an exception to the standardized salary rates. Hence, such allowances can no longer be granted after the effectivity of R.A. 6758.

Petitioners claim that the grant of incentive allowances is incidental to and necessary for the enforcement of the NHA's powers and duties. However, this contention cannot prevail in the light of express provisions of law that rationalized government salary rates in pursuit of similarly noteworthy objectives.

Further, petitioners' contention that R.A. 6758 does not apply to the incentive allowances, because these are merely temporary in nature and are given only to few employees, does not hold water. A reading of R.A. 6758 shows that it does not distinguish whether allowances are permanent in nature or are provided to an entire class of government employees. In fact,


the law itself provides that it is 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.

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.

In *Baybay Water District v. Commission on Audit*,¹¹ 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.

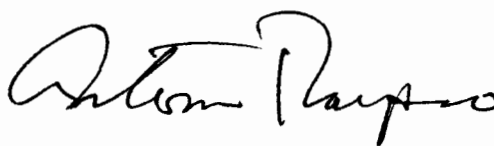
WHEREFORE, premises considered, the Petition is **DISMISSED**. Commission on Audit Decision No. 2008-102 dated 24 October 2008 is hereby **AFFIRMED**.

SO ORDERED.



MARIA LOURDES P. A. SERENO
Associate Justice

¹¹ 425 Phil. 326 (2002).

WE CONCUR:



ANTONIO T. CARPIO
Senior Associate Justice

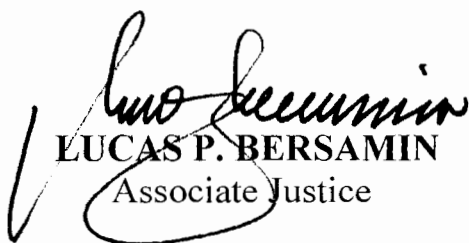


PRESBITERO J. VELASCO, JR.
Associate Justice

(On official leave)
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

(On leave)
ARTURO D. BRION
Associate Justice


(On official business)
DIOSDADO M. PERALTA
Associate Justice



LUCAS P. BERSAMIN
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice



ROBERTO A. ABAD
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice

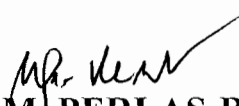


JOSE PORTUGAL PEREZ
Associate Justice

(On leave)
JOSE CATRAL MENDOZA
Associate Justice



BIENVENIDO L. REYES
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

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.

A handwritten signature in black ink, appearing to read "Antonio T. Carpio", written in a cursive style.

ANTONIO T. CARPIO

Senior Associate Justice

(Per Section 12, R.A. 296

The Judiciary Act of 1948, as amended)