Republic of the Philippines
Supreme Court
Manila

EN BANC

NATIONAL TRANSMISSION CORPORATION, Petitioner,	**G.R. No. 223625**
	Present:
- versus -	SERENO, *C.J.,* CARPIO, VELASCO, JR., LEONARDO-DE CASTRO, BRION, PERALTA,* BERSAMIN, DEL CASTILLO, PEREZ, MENDOZA, REYES, PERLAS-BERNABE,* LEONEN, JARDELEZA, and CAGUIOA, *JJ.*
COMMISSION ON AUDIT (COA) and COA CHAIRPERSON MICHAEL G. AGUINALDO, Respondents.	Promulgated: November 22, 2016

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DECISION

MENDOZA, *J.*:

This petition for *certiorari* under Rule 64 of the Revised Rules of Court seeks to reverse and set aside the March 19, 2015 Decision[1] and December 23, 2015 Resolution[2] of the Commission on Audit *(COA)* which

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* On Official Leave.
[1] Concurred in by Officer-in-Charge Commissioner Heidi L. Mendoza and Commissioner Jose A. Fabia; *rollo*, pp. 31-39.
[2] Id. at 40.

affirmed the August 7, 2013 Decision[3] of the COA Corporate Government Sector Cluster 3 *(COA-CGS)*.

Petitioner National Transmission Corporation *(TransCo)* is a government owned and controlled corporation *(GOCC)* created under Republic Act *(R.A.)* No. 9136 or the Electric Industry Reform Act of 2001 *(EPIRA)*.[4] On March 1, 2003, it began to operate and manage the power transmission system that links power plants to the electric distribution utilities nationwide.[5]

On April 1, 2003, TransCo engaged the services of Benjamin B. Miranda *(Miranda)* until his services were terminated on June 30, 2009. From April 1, 2003 to March 21, 2004, however, Miranda was a contractual employee with the position of Senior Engineer pursuant to the Service Agreement.[6]

In December 2007, a public bidding was conducted which awarded the concession to the National Grid Corporation of the Philippines *(NGCP)*, which was eventually granted a congressional franchise to operate the transmission network through the enactment of R.A. No. 9511. On February 28, 2008, the Power Sector Assets and Liabilities Management and TransCo executed a Concession Agreement with NGCP setting forth the parties' rights and obligations for the concession.[7]

On January 15, 2009, TransCo turned over the management and operation of its nationwide transmission system to NGCP. As such, several TransCo personnel, including Miranda, were terminated on June 30, 2009.[8] Miranda received his separation pay benefits in the aggregate amount of ₱401,911.90 pursuant to TransCo Resolution No. TC 2009-005.[9]

On January 26, 2011, TransCo received the Notice of Disallowance *(ND)* No. 11-003-(10),[10] which disallowed in audit the amount of ₱55,758.26 corresponding to inclusion of Miranda's service from April 1, 2003 to April 15, 2004 in computing his separation benefits. Aggrieved, it appealed the said ND to the COA-CGS.

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[3] Penned by Director IV Rufina S. Laquindanum; id. at 49-52.
[4] Id. at 4.
[5] Id. at 6.
[6] Id. at 41.
[7] Id. at 6-7.
[8] Id. at 7.
[9] Id. at 53-56.
[10] Id. at 46-48.

COA-CGS Ruling

In its August 7, 2013 decision, the COA-CGS upheld the ND. It noted that the terms of the Service Agreement clearly stated that there shall be no employer-employee relationship between Miranda and TransCo and that the services rendered are not considered or will not be credited as government service. The COA-CGS ruled that TransCo Board Resolution No. 2009-005 cannot be used as basis as it did not conform to the laws, rules or regulations pertinent to the grant of separation benefits. Thus, it concluded that the TransCo Board of Directors *(BOD)* erred in including the contractual employees in availing separation benefits.

Unconvinced, TransCo appealed before the COA.

COA Ruling

In its March 19, 2015 decision, the COA sustained the COA-CGS decision. It emphasized that the grant of separation benefits to separated or displaced TransCo employees as a result of the restructuring of the electric industry must be in accordance with the EPIRA. The COA noted that under the EPIRA and its implementing rules and regulations *(IRR)*, separation benefits may be extended to casual or contractual employees, provided their appointments were approved or attested to by the Civil Service Commission *(CSC)*, and they had rendered services for at least one (1) year at the time of the effectivity of the EPIRA. It explained that Miranda was not entitled to separation benefits for the period in question as there was nothing in the records which would prove that his appointment was duly approved or attested to by the CSC.

Moreover, the COA expounded that the Service Agreement explicitly stated that no employer-employee relationship existed between Miranda and TransCo and that he was not entitled to the benefits enjoyed by government employees. Likewise, it averred that the BOD of TransCo cannot issue resolutions contrary to the provisions of the EPIRA. The COA highlighted Section 63 of the EPIRA which requires that the creation of new positions and the levels of or increase in salaries and all other emoluments and benefits of TransCo personnel shall be subject to the approval of the President.

Lastly, the COA ruled that good faith cannot be appreciated in favor of Miranda and the BOD of TransCo. As such, it concluded that Miranda and the BOD should be held solidarily liable for the disallowed amount.

TransCo moved for reconsideration but it was denied by the COA in its December 23, 2015 resolution.

Hence, this present petition raising the following issues:

ISSUES

I

WHETHER OR NOT THE GRANT OF FINANCIAL ASSISTANCE/SEPARATION BENEFIT TO FORMER TRANSCO PERSONNEL ENGAGED BY VIRTUE OF SERVICE AGREEMENTS IS PROHIBITED;

II

WHETHER OR NOT IT IS WITHIN THE TRANSCO BOARD'S POWER TO GRANT FINANCIAL ASSISTANCE/SEPARATION BENEFIT TO PERSONNEL ENGAGED BY VIRTUE OF SERVICE AGREEMENTS; AND

III

WHETHER OR NOT COA COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT AFFIRMED DECISION NO. 2013-04 AND NOTICE OF DISALLOWANCE NO. 11-003(10).[11]

TransCo argues that it was within its corporate powers to grant separation benefits to its personnel separated due to the privatization of its operations. It explains that it was for this reason it passed the resolution providing separation benefit to all employees, whether appointed on permanent, contractual or casual basis. TransCo bewails that Miranda was entitled to the separation benefits despite the provisions of the service contract, and the fact this his appointment lacked CSC approval.

It cites *Lopez v. MWSS*[12] *(Lopez)* where the Court had ruled that therein petitioners were entitled to severance pay notwithstanding the fact the contracts of service stated that they were not government employees, and that the same was not approved by the CSC. Thus, TransCo argues that similar to the employees in *Lopez*, Miranda was a regular employee entitled to separation benefits. Moreover, it manifests that neither the EPIRA nor R.A. No. 9511 limit to permanent employees the award of separation benefits. Lastly, TransCo faults the COA in not appreciating good faith in the disbursements in question.

In its Comment,[13] dated July 29, 2016, the COA countered that it did not commit grave abuse of discretion in upholding the subject ND as the disbursement in question was contrary to law. It explained that Miranda's appointment from April 1, 2003 to April 15, 2004 was neither approved nor

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[11] Id. at 8-9.
[12] 501 Phil. 115 (2005).
[13] *Rollo*, pp. 92-109.

attested to by the CSC. The COA surmised that pursuant to the EPIRA and its IRR, casual and contractual employees are entitled to separation benefits only if their contract of service had been approved or attested by the CSC. It reiterated that the contract of service explicitly stated that Miranda's services shall not be deemed as government service and that no employer-employee relationship existed.

The COA disagreed that good faith may be appreciated in favor of Miranda and the approving officials. It noted that the concerned officials granted the subject benefit notwithstanding the knowledge that, under the service agreement and the clear provisions of the EPIRA and its IRR, Miranda was not entitled to the same. Likewise, the COA opined that Miranda was bound to refund the excess of his separation benefits on the principle of *solutio indebiti* because he had no legal right to receive and retain the questioned benefits.

In its Reply,[14] dated August 30, 2016, TransCo argued that the IRR cannot expand the provisions of the EPIRA because the latter did not qualify which employees are entitled to separation benefits—specifically for casual and contractual employees. It opined that the provisions of the EPIRA should govern, and, thus, all employees of the national government service who are displaced from service as a result of the restructuring of the electricity industry are entitled to separation benefits.

TransCo emphasized that the lack of CSC approval did not negate the presence of an employer-employee relationship. It posited that the approving officials acted in good faith as they were merely implementing the provisions of the EPIRA, and wished to provide financial assistance to its displaced employees. Further, TransCo averred that Miranda acted in good faith as it was his honest intention that he was entitled to receive the disallowed benefits.

The Court's Ruling

The denial of the subject disbursement is anchored primarily on two things: *first*, that the service contract of Miranda categorically stated that the service shall not be deemed as government service and that no employer-employee relationship exists; *second*, that as a contractual employee, Miranda is entitled to separation benefits under the EPIRA and its IRR only if his appointment had been approved or attested to by the CSC.

[14] Id. at 115-124.

On the other hand, TransCo argued that Miranda, based on the nature of his functions, was a regular employee entitled to separation benefits pursuant to the EPIRA. It relied on the pronouncements made by this Court in *Lopez*.

The Court finds that the COA did not gravely abuse its discretion in upholding the questioned ND.

GOCCs employees are bound by the provisions of the GOCC's special charter and civil service laws

It is undisputed that TransCo is a GOCC as it was created by virtue of the EPIRA. As such, it was bound by civil service laws.[15] Under the Constitution, [16] the Civil Service Commission *(CSC)* is the central personnel agency of the government, including GOCCs. It primarily deals with matters affecting the career development, rights and welfare of government employees.[17]

In addition, TransCo is bound by the provisions of its charter. Thus, a review of the law creating TransCo and pertinent CSC issuances is in order to determine the propriety of the benefits Miranda received.

Section 63 of the EPIRA provides for the separation benefits to be awarded to officials and employees displaced by the restructuring electricity industry and privatization of NPC assets, to wit:

> SECTION 63. *Separation Benefits of Officials and Employees of Affected Agencies.* — National Government employees displaced or separated from the service as a result of the restructuring of the electricity industry and privatization of NPC assets pursuant to this Act, shall be entitled to either a separation pay and other benefits **in accordance with existing laws, rules or regulations** or be entitled to avail of the privileges provided under a separation plan which shall be one and one-half month salary for every year of service in the government: *Provided, however*, That those who avail of such privileges shall start their government service anew if absorbed by any government-owned successor company. In no case shall there be any diminution of benefits under the separation plan until the full implementation of the restructuring and privatization.
>
> Displaced or separated personnel as a result of the privatization, if qualified, shall be given preference in the hiring of the manpower requirements of the privatized companies.

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[15] *Obusan v. PNB*, 639 Phil. 554, 563 (2010).
[16] Sections 2(1) and 3, Article IX-B.
[17] *Funa v. Duque III*, G.R. No. 191672, November 25, 2014, 742 SCRA 166.

> The salaries of employees of NPC shall continue to be exempt from the coverage of Republic Act No. 6758, otherwise known as "The Salary Standardization Act".
>
> With respect to employees who are not retained by NPC, the Government, through the Department of Labor and Employment, shall endeavor to implement re-training, job counseling, and job placement programs. [Emphasis supplied]

In turn, Rule 33, Section 1 of the IRR of the EPIRA provides:

> SECTION 1. *General Statement on Coverage.* —
>
> This Rule shall apply to all employees in the National Government service as of 26 June 2001 regardless of position, designation or status, who are displaced or separated from the service as a result of the Restructuring of the electricity industry and Privatization of NPC assets: *Provided, however,* That the coverage for casual or contractual employees shall be limited to those whose appointments were approved or attested by the Civil Service Commission (CSC).

Thus, it is clear that based on the EPIRA and its IRR that all employees of TransCo are entitled to separation benefits, with an additional requirement imposed on casual or contractual employees - their appointments must have been approved or attested by the CSC. Hence, the COA correctly disallowed Miranda's separation benefit in the amount of ₱55,758.26 because it pertained to services rendered under the service contract which was not attested to by the CSC.

Lopez revisited

In an attempt to justify the award of separation benefits covering the entire period of Miranda's employment, TransCo relies on the pronouncement of this Court in *Lopez*. In the said case, the Court ruled that the lack of CSC approval or attestation alone could not negate government employment, *viz*:

> Petitioners are indeed regular employees of the MWSS. **The primary standard of determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. The connection can be determined by considering the nature of the work performed and its relation to the scheme of the particular business or trade in its entirety. Likewise, the repeated and continuing need for the performance of the job has been deemed sufficient evidence of the necessity, if not indispensability of the activity to the business.** Some of the petitioners had rendered more than two decades of service to the MWSS. The continuous and

> repeated rehiring of these bill collectors indicate the necessity and desirability of their services, as well as the importance of the role of bill collectors in the MWSS.
>
> We agree with the CSC when it stated that the authority of government agencies to contract services is an authority recognized under civil service rules. However, said authority cannot be used to circumvent the laws and deprive employees of such agencies from receiving what is due them.
>
> The CSC goes further to say that petitioners were unable to present proof that their appointments were contractual in nature and submitted to the CSC for its approval, and that submission to and approval of the CSC are important as these show that their services had been credited as government service. The point is of no moment. Petitioners were able to attach only two of such *Agreements* which bore the stamp of approval by the CSC and these are simply inadequate to prove that the other agreements were similarly approved. Even petitioners admit that subsequently such *Agreements* were no longer submitted to the CSC for its approval. **Still, the failure to submit the documents for approval of the CSC cannot militate against the existence of employer-employee relationship between petitioners and MWSS.** MWSS cannot raise its own inaction to buttress its adverse position.[18] [Emphases supplied]

In finding for therein petitioners that they were regular government employees, the Court applied the four-fold test, and found that the functions they performed reasonably necessary to the business of the MWSS. For the said reasons, they were considered regular government employees despite the absence of approval or attestation by the CSC.

It must be remembered, however, that the rules of employment in private practice differs from government service.[19] As astutely explained by our colleague Justice Marvic Leonen, that while a private employer should apply the four-fold test in determining employer-employee relationship as it is strictly bound by the labor code, a government employer or GOCC, must, apart from applying the four-fold test, comply with the rules of the CSC in determining the existence of employer-employee relationship.

The difference between private and public employment is readily apparent in our legal landscape. For one, the Labor Code[20] recognizes that the terms and conditions of employment of all government employees, **including those of GOCCs**, shall be governed by the civil service law, rules and regulations. Particularly, in cases of GOCCs created by special law, the terms and conditions of employment of its employees are particularly governed by its charter.

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[18] *Supra* note 12.
[19] *CSC v. Magnaye, Jr.*, 633 Phil. 353, 363 (2010).
[20] Article 282 (formerly Article 276).

Thus, it is high time that the pronouncements in *Lopez* be abandoned. The authorities cited in the said case pertained to private employers. As such, it was expected that the four-fold test, the reasonable necessity of the duties performed and other standards set forth in the Labor Code were used in determining employer-employee relationship. None of the cases cited involved the government as the employer, which poses a different employer-employee relationship from that which is present in private employment.

Also, the *Lopez* case was never cited as an authority in determining employer-employee relationship between the government and its employees. Consequently, it is best that *Lopez* be abandoned because it sets a precarious precedent as it fixes employer-employee relationship in the public sector in disregard of civil service laws, rules and regulations.

To summarize, employer-employee relationship in the public sector is primarily determined by special laws, civil service laws, rules and regulations. While the four-fold test and other standards set forth in the labor code may aid in ascertaining the relationship between the government and its purported employees, they cannot be overriding factors over the conditions and requirements for public employment as provided for by civil service laws, rules and regulations.

Disallowed amount need not be refunded

The Court, nevertheless, finds that TransCo and Miranda be excused from refunding the disallowed amount notwithstanding the propriety of the ND in question. In view of TransCo's reliance on *Lopez*, which the Court now abandons, the Court grants TransCo's petition *pro hac vice* and absolved it from any liability in refunding the disallowed amount.

On another note, even if the ND is to be upheld, Miranda should not be solidarily liable to refund the same. In *Silang v. COA*,[21] the Court had ruled that passive recipients of the disallowed disbursements, who acted in good faith, are absolved from refunding the same, *viz:*

[21] G.R. No. 213189, September 8, 2015.

> **By way of exception, however, passive recipients or payees of disallowed salaries, emoluments, benefits, and other allowances need not refund such disallowed amounts if they received the same in good faith**. Stated otherwise, government officials and employees who unwittingly received disallowed benefits or allowances are not liable for their reimbursement if there is no finding of bad faith. In *Lumayna v. COA,* the Court declared that notwithstanding the disallowance of benefits by COA, the affected personnel who received the said benefits in good faith should not be ordered to refund the disallowed benefits. xxx
>
> In this case, the majority of the petitioners are the LGU of Tayabas, Quezon's rank-and-file employees and *bona fide* members of UNGKAT (named-below) who received the 2008 and 2009 CNA Incentives on the honest belief that UNGKAT was fully clothed with the authority to represent them in the CNA negotiations. As the records bear out, there was no indication that these rank-and-file employees, except the UNGKAT officers or members of its Board of Directors named below, had participated in any of the negotiations or were, in any manner, privy to the internal workings related to the approval of said incentives; hence, under such limitation, the reasonable conclusion is that they were mere passive recipients who cannot be charged with knowledge of any irregularity attending the disallowed disbursement. **Verily, good faith is anchored on an honest belief that one is legally entitled to the benefit, as said employees did so believe in this case**. Therefore, said petitioners should not be held liable to refund what they had unwittingly received. [Emphases supplied]

In the present case, Miranda was a mere passive recipient as he had no involvement when the BOD passed the resolution[22] granting separation benefits to all TransCo employees. Thus, Miranda acted in good faith as he merely received the benefits to which he believed he was entitled to.

WHEREFORE, the petition is **GRANTED *pro hac vice.*** The March 19, 2015 Decision and December 23, 2015 Resolution of the Commission on Audit are **REVERSED** and **SET ASIDE.** The Notice of Disallowance No. 11-003-(10) is **DISMISSED**.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

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[22] *Rollo*, pp. 53-56.

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

(On Official Leave)
DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
Associate Justice

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ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I hereby certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED XEROX COPY:
FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT