



Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
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PHILIPPINE CHARITY G.R. No. 218124  
SWEEPSTAKES OFFICE,  
CARLITO KHO, GLORIA YBAÑEZ,  
CEDRIC L. RECAMARA, MA. TITA Present:  
C. CASTILLON, HILARIO B.  
SERRANO, SONIA ELIZA P.  
NARAGAS, GHINA J. LACANG,  
MEIDEN LEI A. PALARAN,  
ANTONIO ERIC O. SATO,  
CONSTANCIO B. CEMPRON, JR.,  
GLENN GONZAGA, AND  
MICHELE RYAN MENDOZA,

*Petitioners,*

- versus -

THE COMMISSION ON AUDIT,

*Respondent.*

GESMUNDO, *CJ*,  
PERLAS-BERNABE,  
LEONEN,\*  
CAGUIOA,  
HERNANDO,  
CARANDANG,  
LAZARO-JAVIER,  
INTING,  
ZALAMEDA,  
LOPEZ, M.,  
GAERLAN,  
ROSARIO,  
LOPEZ, J., and  
DIMAAMPAO, *JJ*.

Promulgated:

October 5, 2021

X-----X

DECISION

ZALAMEDA, *J.*:

Before the Court is a Petition for *Certiorari* (petition)<sup>1</sup> under Rule 64, in relation to Rule 65, of the Rules of Court assailing Decision No. 2014-

\* On official leave.

<sup>1</sup> Rollo, pp. 3-18.

205<sup>2</sup> dated 10 September 2014 and Resolution<sup>3</sup> dated 09 March 2015 of the Commission on Audit (COA) Proper, which affirmed the decision of the COA Regional Office XIII dated 20 March 2012 disallowing several benefits given by petitioner Philippine Charity and Sweepstakes Office Region XIII (PCSO-XIII, or merely PCSO for brevity) to its officials and employees for calendar years (CY) 2008 and 2009, in the total amount of Php2,744,654.73.<sup>4</sup>

### Antecedents

On 10 August 2010, the Audit Team leader and the Supervising Auditor assigned to PCSO-XIII issued Notices of Disallowance (NDs) which disallowed the following benefits granted by the PCSO-XIII to its officials and employees:<sup>5</sup>

ND No.	Benefit	Amount		
		Claimed	Allowed	Disallowed
10-001-101OF-(09)	Productivity Incentive Bonus (PIB), CY 2008	P114,382.47	P30,000.00	P84,382.47
10-002-101OF-(09)	Cost of Living Allowance (COLA) for CY 2009	288,000.00		288,000.00
10-004-101OF-(09)	Anniversary Cash Gift	300,000.00	60,000.00	240,000.00
10-005-101OF-(09)	Hazard Duty Pay, CY 2009	288,000.00	28,800.00	259,200.00
10-006-101OF-(09)	Christmas Bonus, CY 2009	1,245,472.26		1,245,472.26
10-007-101OF-(09)	Grocery Allowance, CY 2009	720,000.00	120,000.00	600,000.00
10-009-101OF-(09)	Staple Food Allowance, CY 2009	144,000.00	86,400.00	57,600.00
Total		P3,099,854.73	P325,200.00	<b>P2,774,654.73</b>

The PSCO Visayas-Mindanao (VISMIN) Department appealed the

<sup>2</sup> *Id.* at 25-37. Prepared by Chairperson Ma. Gracia M. Pulido Tan with Commissioners Heidi L. Mendoza and Jose A. Fabia and attested by Director IV Commission Secretariat Nilda B. Plaras.

<sup>3</sup> *Id.* at 38.

<sup>4</sup> *Id.* at 5.

<sup>5</sup> *Id.* at 25-26.

NDs to the Regional Director.<sup>6</sup> In its appeal memorandum, the PCSO VISMIN alleged:

- (1) Pursuant to Republic Act (R.A.) No. 1169, otherwise known as the PCSO Charter, the board is authorized to fix the salaries of officials and employees;
- (2) The grant of the above-stated benefits has been previously authorized by the former presidents;
- (3) The benefits have become part of the compensation package of the employees;
- (4) The release of benefits is sourced from the 15% built-in restriction and charged against the savings of PCSO.<sup>7</sup>

On 20 March 2012, the Regional Director rendered COA RO XIII-Decision No. 2012-023 affirming or modifying the NDs in this manner:<sup>8</sup>

ND No.	Benefit	Amount Disallowed	Ruling
10-001-101OF-(09)	Productivity Incentive Pay	84,382.47	Fully Affirmed
10-002-101OF-(09)	COLA	288,000.00	Fully Affirmed
10-004-101OF-(09)	Anniversary Cash Gift	240,000.00	Modified. Anniversary Cash Gift of P3,000 each or P36,000 only is allowed or a total disallowance of P264,0000.00
10-005-101OF-(09)	Hazard Duty Pay	259,200.00	Modified. The full amount of P288,000 is disallowed
10-006-101OF-(09)	Christmas Bonus	1,245,472.26	Modified. Amount to be recomputed at a rate of one and a half (1&1/2) basic salary for incumbents as of June 30, 1989 and one (1) month salary plus P5,000 cash gift for those hired after June 30, 1989. The amount of withholding tax should however be deducted from the amount of recomputed disallowance.
10-007-101OF-(09)	Grocery allowance	600,000	Modified. The full amount of 720,000 is disallowed.
10-009-101OF-(09)	Staple Food Allowance	57,600	Modified. The full amount of P144,000 is disallowed.

Due to the modification of most of the NDs, the Regional Director's decision was elevated to the COA Proper via automatic review pursuant to

<sup>6</sup> *Id.* at 26.

<sup>7</sup> *Id.* at 26-27.

<sup>8</sup> *Id.* at 27-28.

Section 7, Rule V of the 2009 COA Rules of Procedure.<sup>9</sup>

### Ruling of the Commission Proper

On 10 September 2014, the COA Proper promulgated the assailed decision affirming, albeit with modifications, COA RO XIII-Decision No. 2012-023. Thus:

**WHEREFORE**, premises considered, Commission on Audit Regional Office No. XIII-Decision No. 2012-013 dated March 20, 2012 is hereby **AFFIRMED**, except as to the disallowance on the payment of Christmas bonus which payment thereof in excess of the amount allowed by Republic Act No. 6686 as amended by Republic Act No. 8411 shall be disallowed in audit. In summary, the following disallowances are affirmed:

Notice of Disallowance (ND) Nos.	Benefit	Amount
ND No. 10-001-101OF (09)	Productivity Incentive Benefit	P84,382.47
ND No. 10-002-101OF (09)	Cost-of-Living Allowance	P288,000.00
ND No. 10-004-101OF (09)	Anniversary Cash Gift	P264,000.00
ND No. 10-005-101OF (09)	Hazard Duty Pay	P288,000.00
ND No. 10-007-101OF (09)	Grocery Allowance	P720,000.00
ND No. 10-009-101OF (09)	Staple Food Allowance	P144,000.00

For Notice of Disallowance No. 10-006-101 (09) on Christmas bonus, the Audit Team Leader is hereby directed to recompute the disallowance considering the allowable amount equivalent to one month basic salary and cash gift of P5,000.00.<sup>10</sup>

The COA Proper explained that Republic Act No. (RA) 1169,<sup>11</sup> or the PCSO Charter, does not give absolute authority to the PCSO Board of

<sup>9</sup> *Id.* at 28.

<sup>10</sup> *Id.* at 35-36.

<sup>11</sup> Entitled "AN ACT PROVIDING FOR CHARITY SWEEPSTAKES, HORSE RACES, AND LOTTERIES," approved on 18 June 1954.

Directors to fix the salaries and other monetary benefits of PCSO's officials and employees. This power is always subjected to the "pertinent civil service and compensation laws," and PCSO has the duty to follow these laws relating to disbursement of public funds.<sup>12</sup> The COA also looked into each of the benefits and explained how these benefits either lacked proper legal cover or were in excess of the amounts authorized by law.<sup>13</sup>

### Issues

Petitioners now come before the Court to assail COA Proper's Decision. They insist that: (1) the PCSO Board of Directors is empowered by RA 1169 to fix the salaries of its officials and employees; (2) the benefits granted enjoyed the "*ex post facto*" approval of the Presidents under which they were given;<sup>14</sup> (3) the benefits have become part of the compensation package of the employees and the employees had already acquired vested right over them;<sup>15</sup> and, (4) the money used to pay for these benefits came from the 15% operating fund and PCSO savings<sup>16</sup> and therefore sourced from the regular budget of the agency independent of the budgetary support from the national government.

### Ruling of the Court

The Petition lacks merit.

*The Board of Directors of PCSO has no unrestricted authority to fix the monetary benefits of PCSO's employees and officials*

Petitioners are mistaken that the benefits they received are legal and warranted under the circumstances because of the PCSO Board of Directors' power to fix the salaries of PCSO's employees. From the tenor of petitioners' argument, it appears they are forwarding the view that this power of the PCSO Board of Directors is unfettered by any legal constraints when clearly this is not the case. In *PCSO v. COA*,<sup>17</sup> the Court held:

The Court already ruled that R.A. 1169 or the PCSO Charter, does not grant its Board the unbridled authority to fix salaries and allowances of its officials and employees. PCSO is still duty bound to observe pertinent

<sup>12</sup> *Id.* at 28-29.

<sup>13</sup> *Id.* at 29-35.

<sup>14</sup> *Id.* at 9.

<sup>15</sup> *Id.* at 11.

<sup>16</sup> *Id.* at 15.

<sup>17</sup> G.R. No. 243607, 09 December 2020 [Per J. Carandang].



laws and regulations on the grant of allowances, benefits, incentives and other forms of compensation. The power of the Board to fix the salaries and determine the reasonable allowances, bonuses and other incentives are still subject to the review of the DBM.

The PCSO Board of Directors must ensure that in the exercise of its power to fix the salaries and determine the reasonable allowances, bonuses and other incentives of PCSO's employees, the pertinent budgetary legislation laws and rules are observed to the letter. It may not grant additional salaries, incentives and benefits as it may seem fit unless all the laws relating to these disbursements are complied with. Unfortunately for petitioners, the PCSO Board of Directors failed to follow said laws and rules as will be later shown.

*The disallowed Cost of Living Allowance (COLA), Grocery Allowance, and Staple Food Allowance are already deemed integrated into the new standardized salary rate and should each require presidential approvals for their separate grant*

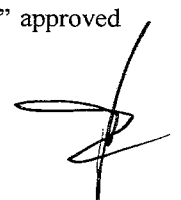
Section 12<sup>18</sup> of RA 6758<sup>19</sup> provides that, as a general rule, allowances due to government employees are deemed integrated into the new standardized salary rate save for these exceptions:

- (1) representation and transportation allowance;
- (2) clothing and laundry allowance;
- (3) subsistence allowance of marine officers and crew on board government vessels;
- (4) subsistence allowance of hospital personnel;

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<sup>18</sup> 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. xxx

<sup>19</sup> Entitled "AN ACT PRESCRIBING A REVISED COMPENSATION AND POSITION CLASSIFICATION SYSTEM IN THE GOVERNMENT AND FOR OTHER PURPOSES," approved on 21 August 1989.



- (5) hazard pay;
- (6) allowance of foreign service personnel stationed abroad; and,
- (7) such other additional compensation not otherwise specified in Section 12 as may be determined by the DBM.

Meanwhile, DBM BC No. 16, s. 1998<sup>20</sup> prohibits the grant of food, rice, gift checks, or any other form of incentives/allowances, except those authorized via Administrative Order by the Office of the President.<sup>21</sup>

It is clear that the COLA, Grocery Allowance, and Staple Food Allowance are not among the enumerated exceptions in Section 12 of RA 6758, and therefore, applying the general rule, should be deemed included in the standardized salary. The only way to justify their separate grant is to show that: (a) it's an allowance sanctioned by the DBM, or, (2) it was authorized by the President. With respect to the allowances excepted by DBM, of particular relevance was the issuance of DBM-Corporate Compensation Circular 10 (DBM-CCC 10) to implement RA 6758. Sections 5.4, 5.5 and 5.6 of DBM-CCC 10 provided as follows:

5.4 The following allowances/fringe benefits which were authorized to GOCCs/GFIs under the standardized Position Classification and Compensation Plan prescribed for each of the five (5) sectoral groupings of GOCCs/GFIs pursuant to P.D. No. 985, as amended by P.D. No. 1597, the Compensation Standardization Law in operation prior to R.A. No. 6785, and to other related issuances are not to be integrated into the basic salary and allowed to be continued after June 30, 1989 only to incumbents of positions who are authorized and actually receiving such allowances/benefits as of said date, at the same terms and conditions provided in said issuances.

5.4.1 Representation and Transportation Allowance (RATA);

5.4.2 Uniform and Clothing Allowance;

5.4.3 Hazard Pay as authorized by law;

5.4.4 Honoraria/additional compensation for employees on detail with special projects or inter-agency undertakings;

5.4.5 Honoraria for services rendered by researchers, experts and specialists who are of acknowledged authorities in their fields of specialization;

<sup>20</sup> Entitled "GRANT OF AMELIORATION ASSISTANCE (AA) TO ALL GOVERNMENT PERSONNEL," 26 November 1998.

<sup>21</sup> See *Bureau of Fisheries v. Commission on Audit*, 584 Phil. 132, 138 (2008) [Per J. Puno].

- 5.4.6 Honoraria for lecturers and resource persons/speakers;
  - 5.4.7 Overtime pay as authorized by law;
  - 5.4.8 Laundry and subsistence allowance for marine officers and crew on board GOCCs/GFIs owned vessels and used in their operations, and of hospital personnel who attend directly to patients and who by nature of their duties are required to wear uniforms;
  - 5.4.9 Quarters Allowance of officials and employees who are entitled to the same;
  - 5.4.10 Overseas, Living Quarters and other allowances presently authorized for personnel stationed abroad;
  - 5.4.11 Night Differential of personnel on night duty;
  - 5.4.12 Per Diems of members of the governing Boards of GOCCs/GFIs at the rate prescribed in their respective Charters;
  - 5.4.13 Flying Pay of personnel undertaking aerial flights;
  - 5.4.14 Per Diems/Allowances of Chairman and Members/Staff of collegial bodies and Committees; and
  - 5.4.15 Per Diems/Allowances of officials and employees on official foreign and local travel outside of their official station.
- 5.5 The following allowances/fringe benefits authorized to GOCCs/GFIs pursuant to the aforementioned issuances are not likewise to be integrated into the basic salary and allowed to be continued only for incumbents of positions as of June 30, 1989 who are authorized and actually receiving such allowances/benefits as of said date, at the same terms and conditions prescribed in said issuances.
- 5.5.1 Rice Subsidy;
  - 5.5.2 Sugar Subsidy;
  - 5.5.3 Death Benefits other than those granted by the GSIS;
  - 5.5.4 Medical/dental/optical allowances/benefits;
  - 5.5.5 Children's allowance;
  - 5.5.6 Special Duty Pay/Allowance;
  - 5.5.7 Meal Subsidy;
  - 5.5.8 Longevity Pay; and
  - 5.5.9 Teller's Allowance.





5.6 Payment of other allowance/fringe benefits and all other forms of compensation granted on top of basic salary, whether in cash or in kind, not mentioned in Sub-Paragraphs 5.4 and 5.5 above shall continue to be not authorized. Payment made for such unauthorized allowances/fringe benefits shall be considered as illegal disbursements of public funds.

The COLA, Grocery Allowance, and Staple Food Allowance are also not among those excepted by the DBM. Still, petitioners insist that all the benefits received by them bear the approval of former Presidents Fidel V. Ramos, Joseph Ejercito Estrada, and Gloria Macapagal-Arroyo. To prove this claim, petitioners presented the following documents:

1. Letter dated 25 August 1997 signed by former PCSO Chairman Manuel L. Morato requesting for approval of several benefits granted to PCSO officials and employees during the past years, and which bears the marginal approval of the former president;<sup>22</sup>

2. Memorandum dated 07 January 2000 of the Office of the President signed by then Executive Secretary Ronaldo B. Zamora approving the payment of Staple Food Incentive of Php600.00 per month starting January 2000, subject to certain conditions such as availability of funds; the applicable laws, rules, and regulations; and, the usual accounting and auditing requirements;<sup>23</sup>

3. Memorandum dated 28 September 2000 of the Office of the President signed by then Executive Secretary Ronaldo B. Zamora approving the grant of Anniversary Cash Gift in the amount of Php5,000.00, Hazard Pay amounting to Php200.00, and *per diems* for the PCSO Board of Directors in the amount of Php3,000.00;<sup>24</sup> and,

4. Memorandum dated 11 June 2001 of the Office of the President signed by then Executive Secretary Alberto G. Romulo signifying the *post facto* approval of the President of the benefits received by PCSO officials and employees enumerated in PCSO's letter dated 26 May 2001, but applicable only to those received by the employees, and not the officials.<sup>25</sup>

We agree with the COA Proper's observation that these documents "should not be interpreted as an unqualified and continuing right to grant

<sup>22</sup> *Rollo*, pp. 127-131.

<sup>23</sup> *Id.* at 133.

<sup>24</sup> *Id.* at 134.

<sup>25</sup> *Id.* at 135.

myriads of financial benefits to PCSO officials and employees.”<sup>26</sup>

The marginal approvals found in the Letter dated 25 August 1997 and Memorandum dated 11 June 2001 relate to past benefits already given. There was nothing in these documents that could be viewed as extending the grant of the benefits to years subsequent to the approvals. Moreover, the benefits disallowed in the present case are not even covered by Memorandum dated 11 June 2001. The COA Proper found that PCSO’s letter dated 26 May 2001 referenced in the said Memorandum,<sup>27</sup> pertains to the grant of representation and transportation allowance, and draw allowance,<sup>28</sup> none of which are the subject of the NDs here.

The same is true for the Memoranda dated 07 January 2000 and 28 September 2000. There is nothing that suggests that these Memoranda could operate as continuing authorization to grant Staple Food Allowance past CY 2000. Further, the grant of Staple Food Allowance under Memorandum dated 07 January 2000 was subjected to certain restrictions, among them the “law, rules and regulations on the matter.” One such law, rule or regulation is Administrative Order No. 103, s. 2004 (AO 103),<sup>29</sup> which suspended the grant of new or additional benefits, such as the Staple Food Allowance, to officials and employees of GOCCs except for (a) Collective Negotiation Agreement (CNA) Incentives, and (b) those expressly provided by presidential issuance. In Our minds, AO 103 already superseded whatever authority was given by the Memorandum dated 07 January 2000. As regards the grant of Anniversary Cash Gift, it must be pointed out that the COA disallowed its grant not on the absence of presidential approval but on ground that its amount exceeded that authorized by law, which would be discussed next.

*The PCSO’s grant of Productivity Incentive Benefit, Anniversary Bonus, and Christmas Bonus exceeded the amounts authorized by the relevant law, rules, and regulations; while the grant of Hazard Duty Pay did not meet the requirements set forth by the DBM*

As regards the grant of the Productivity Incentive Benefit,

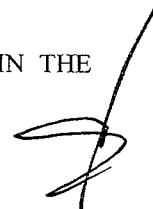
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<sup>26</sup> *Id.* at 34.

<sup>27</sup> *Id.* at 135.

<sup>28</sup> *Id.*

<sup>29</sup> Entitled “DIRECTING THE CONTINUED ADOPTION OF AUSTERITY MEASURES IN THE GOVERNMENT,” issued on 31 August 2004.



Anniversary Bonus, and Christmas Bonus, We affirm the COA Proper's ruling that the disallowance of these benefits is correct. Indeed, the amounts given by PCSO to its officials and employees in this case exceeded those authorized by the pertinent law, rules, regulation authorizing their grant. The excess amounts received by the employees and officials of the PCSO lack legal basis. Thus:

1. Administrative Order No. 161, s. 1994 (AO 161)<sup>30</sup> authorized the grant of Productivity Incentive Bonus in an amount not exceeding Php2,000.00. In this case, however, the disallowed benefit amounted to Php10,000.00 for each official and employee pursuant Resolution No. 135.<sup>31</sup>

2. Resolution No. 1352, s. 2009<sup>32</sup> of the PCSO Board of Directors granted Anniversary Bonus in the amount of Php25,000.00 contrary to Administrative Order No. 263, s. 1996 (AO 263),<sup>33</sup> which provides that payment of the Anniversary Bonus shall be in an amount not exceeding Php3,000.00.

3. Resolution No. 2166<sup>34</sup> granted Christmas Bonus equivalent three months of basic salary in violation of RA 6686<sup>35</sup> as amended by RA 8441<sup>36</sup> providing for Christmas Bonus equivalent only to one month salary plus additional cash gift of Php5,000.00.

The Court also sustains the disallowance of the Hazard Duty Pay of Php24,00.00 given to each official and employee.<sup>37</sup> Under DBM CCC-10, it must first be shown that the intended recipient-employees of the hazard pay were actually assigned to and performing their duties and responsibilities in strife-torn and embattled areas for a certain period with maximum rates allowable. Here, apart from the arguments raised in the petition, there is

<sup>30</sup> Entitled "PRESCRIBING A STANDARD INCENTIVE PAY SYSTEM BASED ON PRODUCTIVITY AND PERFORMANCE, FOR ALL OFFICIALS AND EMPLOYEES OF THE GOVERNMENT, NATIONAL AND LOCAL INCLUDING THOSE OF GOVERNMENT-OWNED AND/OR -CONTROLLED CORPORATIONS AND GOVERNMENT FINANCIAL INSTITUTIONS AND FOR OTHER PURPOSES," signed on 06 December 1994.

<sup>31</sup> *Rollo*, p. 122.

<sup>32</sup> *Id.* at 124.

<sup>33</sup> Entitled "AUTHORIZING THE GRANT OF ANNIVERSARY BONUS TO OFFICIALS AND EMPLOYEES OF GOVERNMENT ENTITIES," signed on 28 March 1996.

<sup>34</sup> *Rollo*, p. 125.

<sup>35</sup> Entitled "AN ACT AUTHORIZING ANNUAL CHRISTMAS BONUS TO NATIONAL AND LOCAL GOVERNMENT OFFICIALS AND EMPLOYEES STARTING CY 1988," approved on 14 December 1988.

<sup>36</sup> Entitled "AN ACT INCREASING THE CASH GIFT TO FIVE THOUSAND PESOS ([Php]5,000.00), AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED SIX THOUSAND SIX HUNDRED EIGHTY-SIX, AND FOR OTHER PURPOSES," approved on 22 December 1997.

<sup>37</sup> *Rollo*, p. 31.

nothing to prove that the recipients of the Hazard Duty Pay were able to meet these requirements. Thus, the COA Proper was correct that PCSO's "across-the-board grant of hazard pay without qualifications and without any showing of compliance with existing circulars finds no basis in law."<sup>38</sup>

*The PCSO officials and employees  
acquired no vested right to receive  
the disallowed benefits*

We also find no merit in petitioners' argument that because of the continuous grant of the disallowed benefits over a long period of time, the officials and employees of PCSO have acquired vested rights over them. Customs, practice, and tradition regardless of length of time, so long as it lacked legal anchor, could not produce any vested right.<sup>39</sup> Neither is there merit to petitioners' claim that the disallowance of the benefits they received diminished their existing benefits. Aside from alleging it, diminution of benefits should be proved by sufficient evidence. Thus, in *PCSO v. Pulido-Tan*,<sup>40</sup> We ruled:

The Court has steadily held that, in accordance with second sentence (first paragraph) of Section 12 of R.A. No. 6758, allowances, fringe benefits or any additional financial incentives, whether or not integrated into the standardized salaries prescribed by R.A. No. 6758, should continue to be enjoyed by employees who were incumbents and were actually receiving those benefits as of July 1, 1989. Here, the PCSO failed to establish that its officials and employees who were recipients of the disallowed COLA actually suffered a diminution in pay as a result of its consolidation into their standardized salary rates. It was not demonstrated that such officials and employees were incumbents and already receiving the COLA as of July 1, 1989. Therefore, the principle of non-diminution of benefits finds no application to them.

Neither is there merit in the contention that the PCSO officials and employees already acquired vested rights over the COLA as it has been a part of their compensation for a considerable length of time. Such representation was not supported by any evidence showing that a substantial period of time had elapsed. Nevertheless, practice, without more — no matter how long continued — cannot give rise to any vested right if it is contrary to law. While We commiserate with the plight of most government employees who have to make both ends meet, the letter and the spirit of the law should only be applied, not reinvented or modified.<sup>41</sup>

<sup>38</sup> *Id.*

<sup>39</sup> *See Metropolitan Waterworks and Sewerage System v. Commission on Audit*, 821 Phil. 117, 130 (2017), G.R. Nos. 195105 & 220729, 21 November 2017 [Per J. Bersamin].

<sup>40</sup> 785 Phil. 266 (2016), G.R. No. 216776, 19 April 2016 [Per J. Peralta].

<sup>41</sup> *Id.* at 285-286.

Here, petitioners merely alleged that the benefits disallowed were received "as early as November 1986."<sup>42</sup> They did this without any proof showing that they were incumbents and were actually receiving those benefits as of 01 July 1989, and therefore, entitled to continue receiving them pursuant to that sentence in Section 12 of RA 6758, which states that "[s]uch 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." Worse, petitioners' own allegation that the grant of Productivity Incentive Pay and Staple Food Allowance only started in 1992 and 2000, respectively, effectively removes these benefits from the ambit of the exception found in Section 12 of RA 6758.

*The fact that the disallowed benefits were sourced from the 15% built-in restriction only bolsters the finding that the disallowed benefits were illegally granted*

The Court agrees with the COA Proper that petitioners' allegation that the disallowed benefits were sourced from the 15% built-in restriction and charged against PCSO's savings cannot save them from the disbursements' obvious non-compliance with relevant and pertinent laws, rules and regulations. If at all, this fact aggravates petitioners' situation even more. In *PCSO v. COA*,<sup>43</sup> it was explained:

Under the PCSO Charter, Section 6 (C) thereof merely states, among others, that 15% of the net receipts from the sale of sweepstakes tickets (whether for sweepstakes races, lotteries, or other similar activities) shall be set aside as contributions to the operating expenses and capital expenditures of the PCSO.

The petitioners failed to take into account Section 6 (D) of the same law which provides that "all balances of any funds in the Philippine Charity Sweepstakes Office shall revert to and form part of the charity fund provided for in paragraph (B), and shall be subject to disposition as above stated."

From the foregoing, it is clear that the 15% built in restriction is allocated for operating expenses and capital expenditures of PCSO. By the clear import of its charter, all balances of any funds of PCSO revert to the Charity Fund and are not considered as savings which can be reallocated by the Board and be granted as benefits to its officials and employees.

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<sup>42</sup> *Rollo*, p. 14.

<sup>43</sup> *Supra* at note 14.



The fact that the disallowed benefits were sourced from the 15% built-in restriction and charged against PCSO's savings all the more supports and reinforces the COA Proper's ruling that the disallowed benefits lacked legal basis. Indeed, the COA Proper was correct in ruling that the funds used to pay for the disallowed benefits are "not meant to be distributed to all PCSO's officials and employees in whatever form and designation it may deem convenient," as the PCSO Charter itself provides for where these savings are supposed to go and how they should be utilized.<sup>44</sup>

*The Court's ruling here does not apply to governmental bodies enjoying fiscal autonomy*

At this juncture, the Court clarifies that Our disquisition on the need to secure the approval of the President or the DBM granting new or additional monetary benefits, shall only apply to government agencies whose power to fix compensation and allowances of its officers and employees are subject to certain limitations provided by law and budgetary issuances.<sup>45</sup> It does not cover agencies enjoying fiscal autonomy under the 1987 Constitution such as the Judiciary, the Civil Service Commission, the Commission on Audit, the Commission on Elections, and the Office of the Ombudsman. In *Bengzon v. Drilon*,<sup>46</sup> the Court ruled that these bodies require fiscal flexibility in the discharge of their constitutional duties:

As envisioned in the Constitution, the fiscal autonomy enjoyed by the Judiciary, the Civil Service Commission, the Commission on Audit, the Commission on Elections, and the Office of the Ombudsman contemplates a guarantee of full flexibility to allocate and utilize their resources with the wisdom and dispatch that their needs require. It recognizes the power and authority to levy, assess and collect fees, fix rates of compensation not exceeding the highest rates authorized by law for compensation and pay plans of the government and allocate and disburse such sums as may be provided by law or prescribed by them in the course of the discharge of their functions.

Fiscal autonomy means freedom from outside control. If the Supreme Court says it needs 100 typewriters but DBM rules we need only 10 typewriters and sends its recommendations to Congress without even informing us, the autonomy given by the Constitution becomes an empty and illusory platitude.

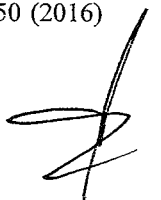
The Judiciary, the Constitutional Commissions, and the Ombudsman

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<sup>44</sup> *Rollo*, p. 35.

<sup>45</sup> See *Philippine Health Insurance Corporation v. Commission on Audit*, 801 Phil. 427, 449-450 (2016) [Per J. Peralta].

<sup>46</sup> 284 Phil. 245 (1992) [Per J. Gutierrez, Jr.].



must have the independence and flexibility needed in the discharge of their constitutional duties. The imposition of restrictions and constraints on the manner the independent constitutional offices allocate and utilize the funds appropriated for their operations is anathema to fiscal autonomy and violative not only of the express mandate of the Constitution but especially as regards the Supreme Court, of the independence and separation of powers upon which the entire fabric of our constitutional system is based.<sup>47</sup>

Based on the foregoing, We rule that the COA Proper did not commit grave abuse of discretion in upholding the validity of the NDs. With this issue finally resolved, the Court now turns its attention to determine whether petitioners, both approving/certifying officers and recipients, are liable to return the disallowed amount.

*The approving and certifying officers were grossly negligent in failing to observe the clear and unequivocal provisions of laws and rules applicable to the disbursement of the disallowed benefits*

In *Madera v. COA*,<sup>48</sup> the Court had provided a definitive set of rules (*Madera Rules*) in determining the liability of government officers and employees being made to return employee benefits that were disallowed in audit. Thus:

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 the 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 herein, excludes amounts excused under the following sections 2c and 2d.
  - c. Recipients — whether approving or certifying officers or mere

<sup>47</sup> *Id.* at 268-269.

<sup>48</sup> G.R. No. 244128, 08 September 2020 [Per J. Caguioa].



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.

Rules 2a and 2b of the *Madera* Rules were based on Book I, Chapter 9, Sections 38<sup>49</sup> and 39,<sup>50</sup> in relation to Book VI, Chapter V, Section 43,<sup>51</sup> of the Administrative Code,<sup>52</sup> which provide that government officials who approved and certified the grant of disallowed benefits are held solidarily liable to return said disallowed amount when they are found to have acted in evident bad faith, with malice, or if they were grossly negligent in the performance of their official duties. These rules are further anchored on the principle that “public officers are accorded with the presumption of regularity in the performance of their official functions – [t]hat is, when an act has been completed, it is to be supposed that the act was done in the manner prescribed and by an officer authorized by law to do it.”<sup>53</sup>

In *PCSO v. Pulido-Tan*,<sup>54</sup> and *PCSO v. COA*,<sup>55</sup> the Court declared the approving/certifying officers liable to return the disallowed amount by reason of their failure to abide by the provisions of the pertinent laws and rules. It is worthy to note that both cases are similar to the case at bar insofar

<sup>49</sup> SECTION 38. Liability of Superior Officers. — (1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.

xxx

(3) A head of a department or a superior officer shall not be civilly 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.

<sup>50</sup> SECTION 39. Liability of Subordinate Officers. — No subordinate officer or employee shall be civilly liable for acts done by him in good faith in the performance of his duties. However, he shall be liable for willful or negligent acts done by him which are contrary to law, morals, public policy and good customs even if he acted under orders or instructions of his superiors.

<sup>51</sup> SECTION 43. Liability for Illegal Expenditures. — Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and 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.

Any official or employee of the Government knowingly incurring any obligation, or authorizing any expenditure in violation of the provisions herein, or taking part therein, shall be dismissed from the service, after due notice and hearing by the duly authorized appointing official. If the appointing official is other than the President and should he fail to remove such official or employee, the President may exercise the power of removal.

<sup>52</sup> Executive Order No. 292, 25 July 1987.

<sup>53</sup> *Supra* at note 44, emphasis omitted.

<sup>54</sup> *Supra* at note 36.

<sup>55</sup> *Supra* at note 14.



as the benefits granted by PCSO to its employees and officials were disallowed for its failure to observe the relevant laws and rules, in particular RA 6758. Also, interestingly, in both cases, PCSO advanced the same arguments they argued in the present case.

*PCSO v. Pulido-Tan*,<sup>56</sup> the Court dismissed the responsible officers' plea of good faith in this manner:

In view of the above issuances, the PCSO Board of Directors who approved Resolution No. 135 are liable. Their authority under Sections 6 and 9 of R.A. No. 1169, as amended, is not absolute. They cannot deny knowledge of the DBM and PSLMC issuances that effectively prohibit the grant of the COLA as they are presumed to be acquainted with and, in fact, even duty-bound to know and understand the relevant laws/rules and regulations that they are tasked to implement. Their refusal or failure to do so do not exonerate them since mere ignorance of the law is not a justifiable excuse. As it is, the presumptions of "good faith" and "regular performance of official duty" are disputable and may be contradicted and overcome by other evidence.

The same thing can be said as to the five PCSO officials who were held accountable by the COA. They cannot approve the release of funds and certify that the subject disbursement is lawful without ascertaining its legal basis. If they acted on the honest belief that the COLA is allowed by law/rules, they should have assured themselves, prior to their approval and the release of funds, that the conditions imposed by the DBM and PSLMC, particularly the need for the approval of the DBM, Office of the President or legislature, are complied with. Like the members of the PCSO Board, the approving/certifying officers' positions dictate that they are familiar of governing laws/rules. Knowledge of basic procedure is part and parcel of their shared fiscal responsibility. They should have alerted the PCSO Board of the validity of the grant of COLA. Good faith further dictates that they should have denied the grant and refrained from receiving the questionable amount.<sup>57</sup>

Meanwhile, in *PCSO v. COA*,<sup>58</sup> the Court ruled in a similar fashion. Thus:

Accordingly, the named PCSO-LPDO officials in this case, who implemented the same, authorized its release without ascertaining its legal basis and even received the disallowed amounts, are held liable. Despite the lack of authority for granting the said allowances and benefits, they still approved its grant and release in excess of the allowable amounts and extended the same benefits to other officials and employees, as well as to themselves, in deliberate violation of the letter and spirit of [RA] 6758 and

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<sup>56</sup> *Supra* at note 36.

<sup>57</sup> *Id.* at 290-291.

<sup>58</sup> *Supra* note 10.

related laws. x x x

We find no reason to treat the approving/certifying officers of PCSO differently here. In *The Officers and Employees of Iloilo Provincial Government v. COA*,<sup>59</sup> We held that failure to follow a clear and straightforward legal provision constitutes gross negligence, to wit:

Gross negligence has been defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected. As discussed by Senior Associate Justice Perlas-Bernabe, "[g]ross negligence may become evident through the non-compliance of an approving/authorizing officer of clear and straightforward requirements of an appropriation law, or budgetary rule or regulation, which because of their clarity and straightforwardness only call for one [reasonable] interpretation." (Emphasis ommitted)

Indeed, Section 12 of RA 6758 and DBM CCC-10 are clear as to what benefits, allowances and incentives are not included in the standardized salary rates. Also, the laws governing the other benefits here that were disallowed by reason of their excessiveness, were also unequivocal as to the amount authorized to be given. Thus, an interpretation of these laws that seems to permit the grant of a higher amount could not be countenanced. Finally, the approving/certifying cannot feign ignorance of PCSO's own charter that restricts the power of the PCSO Board of Directors to fix the salaries and benefits of PCSO's officials and employees.

For their gross negligence, the Court finds the approving/certifying officers solidarily liable for the disallowed amount pursuant to Section 43, Chapter 5, Book IV of the Administrative Code, which reads:

**SECTION 43. Liability for Illegal Expenditures. — Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and 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.**

**Any official or employee of the Government knowingly incurring any obligation, or authorizing any expenditure in violation of the provisions herein, or taking part therein, shall be dismissed**

<sup>59</sup> G.R. No. 218383, 05 January 2021 [Per J. Zalameda].

**from the service, after due notice and hearing by the duly authorized appointing official. If the appointing official is other than the President and should he fail to remove such official or employee, the President may exercise the power of removal. (Emphasis supplied)**

*The payees are liable to return the amount they received pursuant to principle of solutio indebiti*

By promulgating the *Madera* Rules, the Court had veered away from the previously prevalent “good faith doctrine” applied in exonerating passive recipients, and returned to the basic standpoint of applying the principles of *solutio indebiti* and unjust enrichment in determining liability for disallowed amounts.<sup>60</sup> This Court views the receipt by the payees of disallowed benefits as one by mistake, thus creating an obligation on their part to return the same. Further, the Court had interpreted COA Circular No. 2009-006 dated 15 September 2009<sup>61</sup> as basis to the extent of their liability for the amount they unduly received, as well as the solidary liability of officers who are guilty of bad faith, malice or gross negligence in the disbursement of the disallowed amounts.<sup>62</sup> Thus:

SECTION 16. DETERMINATION OF PERSONS RESPONSIBLE/LIABLE. —

16.1 The Liability of public officers and other persons for audit disallowances/charges shall be determined on the basis of (a) the nature of the disallowance/charge; (b) the duties and responsibilities or obligations of officers/employees concerned; (c) the extent of their participation in the disallowed/charged transaction; and (d) the amount of damage or loss to the government, thus:

x x x x

16.1.5 The **payee of an expenditure shall be personally liable** for a disallowance where the ground thereof is his failure to submit the required documents, and the Auditor is convinced that the disallowed transaction did not occur or has no basis in fact.

16.2 **The liability for audit charges shall be measured by the individual participation and involvement of public officers** whose duties require appraisal/assessment/collection of government revenues and receipts in the charged transaction.

16.3 **The liability of persons determined to be liable under an ND/NC shall be solidary** and the Commission may go against any person

<sup>60</sup> *Supra* at note 44.

<sup>61</sup> Entitled “PRESCRIBING THE USE OF THE RULES AND REGULATIONS ON SETTLEMENT OF ACCOUNTS,” September 15, 2009

<sup>62</sup> *Supra* at note 44.

liable without prejudice to the latter's claim against the rest of the persons liable.

Nevertheless, despite the deletion of good faith as a defense available to passive-recipients, their liability to return disallowed benefits may still be excused based on these grounds now embodied in Rules 2c and 2d of the *Madera* Rules: (1) when the amount disbursed was genuinely given in consideration of services rendered; (2) when undue prejudice will result from requiring payees to return; (3) where social justice or humanitarian considerations are attendant; and (4) other *bona fide* exceptions as may be determined on a case to case basis.<sup>63</sup>

None of these exceptions are present here.

In *Abellanosa v. COA (Abellanosa)*,<sup>64</sup> the Court explained that for the first exception under Rule 2c to apply, certain requisites must be present. Thus:

As a supplement to the *Madera* Rules on Return, the Court now finds it fitting to clarify that in order to fall under Rule 2c, *i.e.*, amounts genuinely given in consideration of services rendered, the following requisites must concur:

- (1) the personnel incentive or benefit has proper basis in law but is only disallowed due to irregularities that are merely procedural in nature; and
- (2) the personnel incentive or benefit must have a clear, direct, and reasonable connection to the actual performance of the payee-recipient's official work and functions for which the benefit or incentive was intended as further compensation.

Verily, these refined parameters are meant to prevent the indiscriminate and loose invocation of Rule 2c of *Madera* Rules on Return which may virtually result in the practical inability of the government to recover. To stress, Rule 2c as well as Rule 2d should remain true to their nature as exceptional scenarios; they should not be haphazardly applied as an excuse for non-return, else they effectively override the general rule which, again, is to return disallowed public expenditures.

*Abellanosa* instructs us that the legality of the expenditure is the primary consideration before a benefit could be considered as genuinely

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<sup>63</sup> *Id.*

<sup>64</sup> G.R. No. 185806, 17 November 2020.



given in consideration of services rendered.<sup>65</sup> This “legality” includes compliance with all the legal conditions for the disbursement. Further, the disallowance should have been the result of some procedural error not affecting the genuineness of the payout.<sup>66</sup> These circumstances would show that the payees would have no issue receiving the benefit disallowed were it not for that minor mistake.<sup>67</sup> Here, the benefits which were supposed to be part of the standardized salary rate under Section 12 of RA 6758 clearly lack legal cover. Meanwhile, those granted in an amount higher than those authorized by the laws governing them are illegal as to the excess amount.

As regards the second requisite, *Abellanos* explains:

**Aside from having proper basis in law, the disallowed incentive or benefit must have a clear, direct, reasonable connection to the actual performance of the payee-recipient's official work and functions.** Rule 2c after all, excuses only those benefits “genuinely given in consideration of services rendered”; in order to be considered as “genuinely given,” not only does the benefit or incentive need to have an ostensible statutory/legal cover, there must be actual work performed and that the benefit or incentive bears a clear, direct, and reasonable relation to the performance of such official work or functions. To hold otherwise would allow incentives or benefits to be excused based on a broad and sweeping association to work that can easily be feigned by unscrupulous public officers and in the process, would severely limit the ability of the government to recover.<sup>68</sup> (Emphasis supplied)

In *Officers and Employees of Iloilo Provincial Government*,<sup>69</sup> We ruled that this clear, direct, and reasonable relation between the benefit received and the recipient's work or function is an evidentiary matter, the burden of proving which, belongs to the passive-recipients.<sup>70</sup> Unfortunately for petitioners, the present petition is bereft of any evidence to convince Us that such connection exists between the benefits received and the work performed by the individual recipients.

Neither could the passive-recipients be exonerated on the grounds of undue prejudice, social justice or humanitarian considerations, or other *bona fide* exceptions, all of which are subsumed under Rule 2d of the *Madera* Rules. *Abellanos* explains:

The same considerations ought to underlie the application of Rule 2d

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<sup>65</sup> *Id.*

<sup>66</sup> *Supra* at note 44.

<sup>67</sup> *Supra* at note 55.

<sup>68</sup> *Supra* at note 60.

<sup>69</sup> *Supra* at note 55.

<sup>70</sup> *Supra* at note 44.

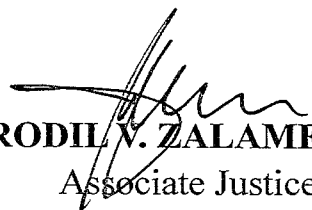


as a ground to excuse return. In *Madera*, the Court also recognized that the existence of undue prejudice, social justice considerations, and other *bona fide* exceptions, as determined on a case-to-case basis, may also negate the strict application of *solutio indebiti*. This exception was borne from the recognition that in certain instances, the attending facts of a given case may furnish an equitable basis for the payees to retain the amounts they had received. While Rule 2d is couched in broader language as compared to Rule 2c, the application of Rule 2d should always remain true to its purpose: **it must constitute a bona fide instance which strongly impels the Court to prevent a clear inequity arising from a directive to return.** Ultimately, it is only in **highly exceptional circumstances, after taking into account all factors** (such as the nature and purpose of the disbursement, and its underlying conditions) that the civil liability to return may be excused. For indeed, it was never the Court's intention for Rules 2c and 2d of *Madera* to be a jurisprudential loophole that would cause the government fiscal leakage and debilitating loss.<sup>71</sup> (Emphasis in the original)

Here, petitioners made no allegations as to the existence of any extraordinary circumstance that could override their liability to return. Petitioners merely alleged that the disallowed benefits were granted to “ensure that the compensation of personnel in the government-owned and controlled corporations and government financial institutions shall generally be comparable with those in the private sector doing comparable work.” This reason hardly satisfies *Abellanosa*'s requirement of extraordinariness. Indeed, We fail to see how a directive to return would result in clear inequity when the only reason offered to justify the grant was to give government employees more benefits on top of what they were only entitled, by law, to receive.

**WHEREFORE**, the Petition is **DISMISSED**. Decision No. 2014-205 dated 10 September 2014 and the Resolution dated 09 March 2015 of the Commission on Audit are hereby **AFFIRMED**. The approving and certifying officers are solidarily liable for the disallowed amount while the payees, whether approving or certifying officers or mere passive recipients, are individually liable for the amounts they personally received.

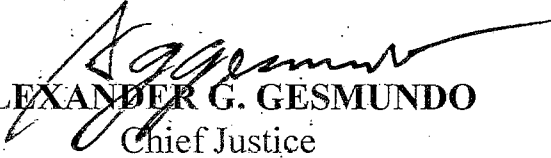
**SO ORDERED.**

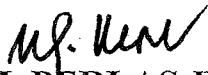
  
**RODIL V. ZALAMEDA**  
Associate Justice

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<sup>71</sup> *Supra* at note 60.

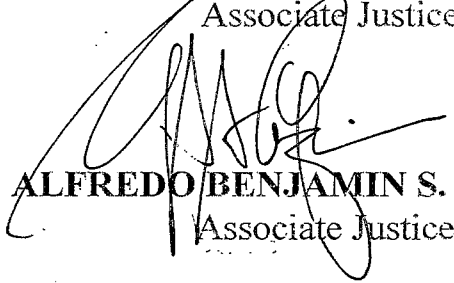
**WE CONCUR:**

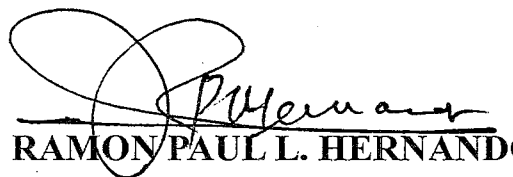
  
**ALEXANDER G. GESMUNDO**  
 Chief Justice

  
**ESTELA M. PERLAS-BERNABE**  
 Associate Justice


(on official leave)


**MARVIC M.V.F. LEONEN**  
 Associate Justice

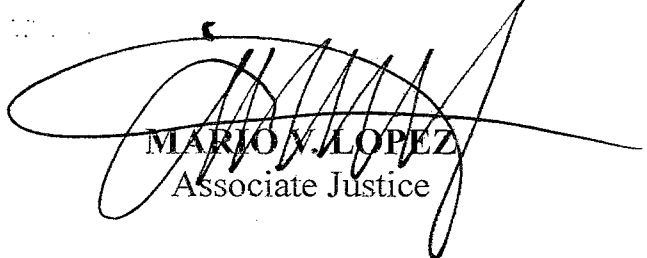
  
**ALFREDO BENJAMIN S. CAGUIOA**  
 Associate Justice

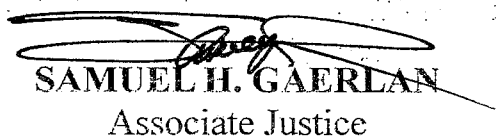
  
**RAMON PAUL L. HERNANDO**  
 Associate Justice

  
**ROSMARID. CARANDANG**  
 Associate Justice


  
**AMY C. LAZARO-JAVIER**  
 Associate Justice

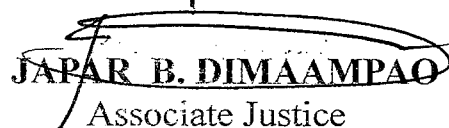
  
**HENRI JEAN PAUL B. INTING**  
 Associate Justice

  
**MARIO V. LOPEZ**  
 Associate Justice

  
**SAMUEL H. GAERLAN**  
 Associate Justice

  
**RICARDO R. ROSARIO**  
 Associate Justice

  
**JHOSEP Y. LOPEZ**  
 Associate Justice

  
**JAPAR B. DIMAAMPAO**  
 Associate Justice




**CERTIFICATION**

Pursuant to the 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



CERTIFIED TRUE COPY  
  
**MARIFE M. LOMIBAO-CUEVAS**  
Clerk of Court  
Supreme Court