



Republic of the Philippines  
**Supreme Court**  
 Manila

EN BANC

**DEVELOPMENT BANK OF THE  
 PHILIPPINES,**

Petitioner,

**G.R. No. 262193**

Present:

GESMUNDO, *C.J.*,  
 LEONEN,  
 CAGUIOA,  
 HERNANDO,  
 LAZARO-JAVIER,  
 INTING,  
 ZALAMEDA,  
 LOPEZ, M.,  
 GAERLAN,  
 ROSARIO,  
 LOPEZ, J.,  
 DIMAAMPAO,  
 MARQUEZ,  
 KHO, JR., and  
 SINGH, *JJ.*

- versus -

**COMMISSION ON AUDIT,**

Respondent.

Promulgated:

July 11, 2023

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**DECISION**

**GAERLAN, J.:**

Before Us is a Petition for *Certiorari*<sup>1</sup> under Rule 64 of the Rules of Court filed by the Development Bank of the Philippines (DBP), seeking to annul and set aside the Decision No. 2018-197<sup>2</sup> dated January 30, 2018 and the Decision No. 2022-072<sup>3</sup> dated January 24, 2022 of the Commission on

<sup>1</sup> *Rollo*, pp. 3-40, Petition for *Certiorari* with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction.

<sup>2</sup> *Id.* at 46-58.

<sup>3</sup> *Id.* at 59-66.

Audit (COA). The COA disallowed the payment of the money value of the leave credits (MVLC) of DBP officials and employees computed based on their gross monthly cash compensation.

### **The Antecedents**

On March 7, 2005, DBP issued Circular No. 10, amending provision number 4 of DBP Circular No. 39 on the computation of the MVLC of its officials and employees. Instead of “highest monthly salary received,” the basis of the MVLC will be the “gross monthly cash compensation” composed of basic salary, officer’s allowance, Representation and Transportation Allowances (RATA), Personnel Economic Relief Allowances (PERA), Additional Compensation (ADCOM), meal, children’s, and family allowances, including longevity pay.<sup>4</sup> Employees of DBP subsequently availed of the benefits under Circular No. 10.

On July 31, 2006, the Corporate Auditor (CA) of DBP issued an Audit Observation Memorandum<sup>5</sup> (AOM) that the MVLC computed based on gross monthly cash compensation is contrary to Section 24 of Civil Service Commission (CSC) No. 41, Series of 1998 and Section 2(i) of Presidential Decree (P.D.) No. 1146 or the Revised Government Service Insurance Act of 1977.<sup>6</sup> The CA noted that P.D. No. 1146 refers the term “salary” to “basic pay received by an employee excluding per diems, bonuses, overtime pay, and allowance.”<sup>7</sup> DBP countered that neither this Court nor the CSC has issued any ruling, resolution, or clear pronouncement that “monthly salary” pertains to “basic monthly salary” in the computation of leave credits. Even assuming that there is such a law, rule, or regulation, Section 13 of DBP’s Revised Charter<sup>8</sup> empowers the bank’s Board of Directors (BOD) to fix the remuneration and other emoluments of the bank’s officers and employees. The same provision also exempts DBP from existing laws, rules, and regulations on compensation classification and qualification standards such as the Salary Standardization Law (SSL).<sup>9</sup>

### *Notice of Disallowance*

On February 28, 2007, the CA issued various notices of disallowance<sup>10</sup> (NDs) to officers and rank-and-file employees of DBP on the

<sup>4</sup> Id. at 69-70.

<sup>5</sup> Id. at 76-78.

<sup>6</sup> Id. at 77. Erroneously referred in the AOM as the Revised Administrative Code.

<sup>7</sup> Id.

<sup>8</sup> Executive Order No. 81, Series of 1986 as amended by Republic Act No. 8523.

<sup>9</sup> *Rollo*, pp. 79-83.

<sup>10</sup> Id. at 86-124.

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MVLC covering the period from March to December 2005, in the total amount of ₱26,182,467.36. A table summary of the NDs is as follows:<sup>11</sup>

ND No./Date	Amount	Payee	Persons Liable/Position	Participation
HRM-MVLC-2006-04 (01-01), 2/28/07	₱2,270,892.63	Various rank-and-file (R/F) personnel, Head Office (HO)	All payees (for calendar year 2005-partial)	Received payment of monetized leave based on gross compensation instead of basic pay
HRM-MVLC-2006-04 (01-02), 2/28/07	₱8,290,866.16	Various officers, Branch	Ma. Theresa R. Pacada, Senior Manager; Estrella R. Aclan, Vice President; Alberto B. Reyno, First Senior Vice President	Approved the payment of transaction
HRM-MVLC-2006-04 (01-03), 2/28/07	₱11,406,757.62	Various officers, HO		
HRM-MVLC-2006-04 (03), 7/4/07	₱4,213,950.95	Various R/F personnel, Branches	Members of the Board of Directors (BOD) of DBP, namely: Vitaliano N. Nañagas II, Chairman; Reynaldo G. David, President; Directors Alexander R. Magno, Floro F. Oliveros; Joseph N. Pangilinan, and Rey Magno Teves	Approved Board Resolution (BR) No. 0071 dated 2/10/05
<b>Total</b>	<b>₱26,182,467.36</b>			

DBP filed a motion for reconsideration (MR), which the Supervising Auditor (SA) denied in her Action on Motion for Reconsideration<sup>12</sup> (AMR) dated May 15, 2007. The AMR stated that the “present salary or compensation of DBP officers and employees are without the requisite authority or approval of the Office of the President (OP) and the Department of Budget and Management (DBM).”<sup>13</sup> In support thereof, the AMR cited

<sup>11</sup> Id. at 17.

<sup>12</sup> Id. at 137-158. Penned by COA Supervising Auditor Hilconeda P. Abril.

<sup>13</sup> Id. at 157.

Our ruling in *Intia v. COA, Philippine Retirement Authority v. Bunag*, and *Central Bank Employees Association v. BSP*.<sup>14</sup>

DBP filed Notices of Appeal<sup>15</sup> dated June 27, 2007 and July 17, 2007 to the Director, Cluster 1, Corporate Government Sector of the COA (Cluster Director). After two years or on July 20, 2009, the Cluster Director directed DBP to submit an appeal memorandum within 20 days from receipt of the order.

#### *The Legal Services Sector Decision*

Prior to the lapse of the period to file an appeal memorandum, the COA Legal Services Sector (LSS) issued a Decision<sup>16</sup> dated August 12, 2009 pertaining to the earlier MR of DBP. It affirmed the NDs and ordered DBP officials who approved the monetization of the leave credits based on gross monthly compensation to jointly and severally refund the total excess payments made thereon. The dispositive portion of the LSS Decision reads:

**WHEREFORE**, the petition is **PARTIALLY GRANTED**. Accordingly, various NDs, subject to a recomputation of excess payments made on the monetized leave credits of DBP Officials and employees, which were computed based on the gross monthly compensation instead of basic salary, are hereby **AFFIRMED**. Hence, the approving officials are held jointly and severally liable to refund the total excess payment made thereon. However, all DBP employees, who merely received them, need not refund the same. The DBP SA is also directed to inform this Commission on the settlement made thereon.<sup>17</sup> (Emphases in the original)

DBP filed a Manifestation and Motion<sup>18</sup> claiming that the LSS Decision is redundant because it pertained to the MR of DBP before the SA which was already resolved in the AMR dated May 15, 2007. DBP further argued that COA violated its right to due process when the latter rendered the LSS Decision while the former still had the benefit of the period to file its appeal memorandum.<sup>19</sup>

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<sup>14</sup> Id. at 151-157.

<sup>15</sup> Id. at 159-160. Notice of Appeal dated June 27, 2007 pertains to the NDs dated December 29, 2006 and the AMR dated May 15, 2007; while the Notice of Appeal dated July 17, 2007 refers to the ND dated July 4, 2007. DBP requested the consolidation of the two appeals in view of the identity of the legal issues involved.

<sup>16</sup> Id. at 206-212. Penned by COA Director IV Anet D. Nacion.

<sup>17</sup> Id. at 211.

<sup>18</sup> Id. at 213-220.

<sup>19</sup> Id. at 217.

On August 24, 2009, DBP filed a Memorandum of Appeal.<sup>20</sup> It alleged that the SA disregarded the provision of DBP's Revised Charter authorizing its BOD to fix the remunerations and emoluments of its officers and employees, which includes the power to adopt a policy defining "monthly salary." It asserted that its BOD does not need to ask for the approval of the OP and the DBM.<sup>21</sup> Likewise, it maintained that the SA's purported bases for disallowance do not directly prohibit the computation of the MVLC based on gross monthly compensation.<sup>22</sup> Even assuming that there is a legal basis for disallowance, DBP prayed that the bank and its concerned employees should not be made to return the amounts received on the ground of good faith when they relied on the provision of the bank's Revised Charter.<sup>23</sup> On August 25, 2009, the COA filed its reply memorandum.

On July 20, 2010, DBP filed a Manifestation and Motion,<sup>24</sup> informing the COA that then President Gloria Macapagal-Arroyo (PGMA) confirmed the "power and authority of the Board of Directors of DBP, independently of the Memorandum Order No. 20 dated June 25, 2001, to approve and allow the implementation and subsequent refinements of DBP's compensation plan adopted in March 1999."<sup>25</sup> DBP claimed that the refinements of DBP's Compensation Plan include DBP Circular No. 10 which defines the salary for purposes of the computation of the MVLC. Hence, DBP theorized that with PGMA's approval of the Compensation Plan and Circular No. 10, the ground on which the NDs were based has been rendered moot and academic.<sup>26</sup>

On November 26, 2010, DBP filed a Motion to Resolve,<sup>27</sup> alleging that many employees who were named accountable for the NDs have retired or otherwise separated from the bank, or are about to do so, but because of the unsettled issue on the disallowances, no final settlement could be effected to their prejudice. It also noted that the unsettled disallowances have long been outstanding in the books of the bank and has affected its financial standing and status before regulating bodies.<sup>28</sup>

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<sup>20</sup> Id. at 164-203, 205.

<sup>21</sup> Id. at 49.

<sup>22</sup> Id. at 168.

<sup>23</sup> Id. at 201-203.

<sup>24</sup> Id. at 222-226.

<sup>25</sup> Id. at 223.

<sup>26</sup> Id. at 224.

<sup>27</sup> Id. at 231-234.

<sup>28</sup> Id. at 232.

On March 8, 2012, DBP filed a Second Manifestation and Motion,<sup>29</sup> noting that in another case<sup>30</sup> involving the disallowance of the increase in the compensation of DBP senior officers, the COA Commission Proper (COA CP) held that PGMA's subsequent approval of the bank's Compensation Plan legitimized the same and the reason for disallowance has ceased to exist. DBP asserted that the foregoing ruling of the COA CP should also apply to the disallowance of the MVLC.

On July 22, 2014, DBP filed a Third Manifestation and Motion,<sup>31</sup> highlighting that in *Land Bank of the Philippines v. Naval, Jr.*,<sup>32</sup> We recognized as valid the independence and autonomy of Landbank of the Philippines (LBP), a government financial institution (GFI), to design its own compensation plan. DBP underscored the similarity between its own Charter and that of LBP. Hence, it reiterated that the COA should allow/pass in audit the payment of the MVLC of DBP officials and employees.

#### *The COA Commission Proper Decision*

On January 30, 2018, the COA CP rendered the assailed Decision No. 2018-197, partially granting the appeal of DBP. It affirmed the NDs on the payment of the MVLC of DBP officials and employees but held that employees who were passive recipients are not required to refund the amount they received in good faith. The decretal portion of the Decision states:

**WHEREFORE**, premises considered, the appeal of the Development Bank of the Philippines (DBP), Makati City, is hereby **PARTIALLY GRANTED**. Accordingly, Notice of Disallowance (ND) Nos. HRM-MVLC-2006-04 (01-01) to HRM-MVLC-2006-04 (01-03), all dated February 28, 2007; and HRM-MVLC-2006-04 (03) dated July 4, 2007, on the payment of the money value of leave credits of the DBP officials and employees, computed based on the gross monthly cash compensation in the total amount of P26,182,467.36 are **AFFIRMED with MODIFICATION**, in that the employees who were passive recipients of the disallowed benefits are not required to refund the amount received in good faith. All other persons named liable in the NDs shall remain solidarily liable for the total disallowance of P26,182,467.36.<sup>33</sup>

<sup>29</sup> Id. at 235-240.

<sup>30</sup> Id. at 241-245. Referring to Decision No. 2012-004 of the COA on the petition of the DBP in relation to the ND No. SOC-2006-12 (06) dated June 19, 2007 on the increase of compensation of DBP senior officers amounting to P17,380,307.64.

<sup>31</sup> Id. at 246-252.

<sup>32</sup> 731 Phil. 532 (2014).

<sup>33</sup> *Rollo*, p. 57.

The COA CP ruled that DBP's authority to fix the remunerations and emoluments of its employees is subject to existing CSC, DBM, and COA laws, rules, and regulations. It cited Section 40 of CSC Memorandum Circular No. 14, Series of 1999 and DBM Budget Circular No. 2002-1 dated January 14, 2002 providing the guidelines and formula for the computation of terminal leave benefits and monetization of leave credits (MLC) based on monthly salary. It alleged that as commonly understood and practiced in all government agencies monthly salary for purposes of MLC pertains to basic pay, excluding all allowances/benefits. The same is true under Republic Act No. 8291,<sup>34</sup> which amended P.D. No. 1146 and the SSL.<sup>35</sup>

The COA rejected DBP's invocation of PGMA's *post facto* approval of the bank's Compensation Plan, since it was made 18 days before the May 10, 2010 Presidential and Vice-Presidential Elections. Under Article XXII of the Omnibus Election Code, a government official cannot give any increase in salary or remuneration or privilege to any government official or employee 45 days before a regular election.<sup>36</sup>

As to the liability for the refund of the disallowed MVLC, the COA CP held that the obligation falls upon: (1) the DBP BOD who approved Board Resolution No. 71 dated February 10, 2005 for without their authorization the payment of MVLC could not be made; and (2) DBP officials who approved the payment as they were performing discretionary functions. Before approving the transactions, DBP officials are not precluded from raising reasonable questions on the funding, legality, regularity, necessity or economy of the expenditures. Thus, as opposed to the passive recipients of the MVLC, DPB BOD and officials cannot be deemed to be in good faith.<sup>37</sup>

DBP moved for reconsideration which the COA CP denied in its Decision No. 2022-072 dated January 24, 2022. The COA CP affirmed its earlier Decision with modification in that even the passive recipients of the MVLC are required to refund the illegally disbursed amount regardless of their good faith. Thus:

**WHEREFORE,** premises considered, the Motion for Reconsideration of Commission of Audit (COA) Decision No. 2018-197 dated January 30, 2018, which affirmed various Notices of Disallowances (ND), on the payment to the Development Bank of the Philippines officials and employees of the monetary value of their leave credits,

<sup>34</sup> The Government Service Insurance System Act of 1997.

<sup>35</sup> *Rollo*, p. 53.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 56.

computed based on gross monthly cash compensation, in the total amount of P26,182,467.36, is hereby **DENIED**. Accordingly, ND Nos. HRM-MVLC-2006-04 (01-01) to HRM-MVLC-2006-04 (01-03), all dated February 28, 2007; and HRM-MVLC-2006-04 (03) dated July 4, 2007, are hereby **AFFIRMED**. COA) Decision No. 2018-197 is hereby **MODIFIED**, in that all the approving and certifying officers shall remain solidarily liable under the NDs which shall be reduced by the actual refunds of the payees who are liable to refund the amounts they received.<sup>38</sup>

Undaunted, DBP filed the present petition for *certiorari*.

### *Petitioner's Arguments*

DBP reiterated the arguments found in its Memorandum of Appeal and Manifestations and Motions before the COA Cluster Director and the COA CP. It added that the COA violated its right to speedy disposition of cases. The COA unjustifiably took more than eight years to resolve DBP's appeal and another four years to rule on the motion for reconsideration.<sup>39</sup> DBP also asserted that the assailed Decisions of the COA were issued in bad faith and in utter disregard of Our ruling in the 2021 case of *Development Bank of the Philippines v. Commission on Audit*<sup>40</sup> (2021 DBP case) where We allegedly recognized that the approval of PGMA has legitimized the Compensation Plan of DBP. Hence, the COA is bound by conclusiveness of judgment. In any case, DBP insisted that PGMA's approval of its Compensation Plan is not prohibited under the Omnibus Election Code as it did not give any new salary increases or privileges 45 days before the May 2010 elections. PGMA merely confirmed the Compensation Plan from 1999 onwards.<sup>41</sup>

Aside from praying for the nullification of the assailed Decisions of the COA CP, DBP asked for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction upon filing of the petition.<sup>42</sup>

Consequently, on February 27, 2023, DBP filed a Motion for Leave to File Supplemental Petition for *Certiorari* and Admission of the Attached Supplemental Petition for *Certiorari*.<sup>43</sup> It repleaded its claim that the 2021 DBP case operates as *res judicata* to the present petition. It also alleged that the 2022 case of *Development Bank of the Philippines v. Commission on Audit*<sup>44</sup> (2022 DBP case) is inconsistent with the 2021 DBP case.

<sup>38</sup> Id. at 65.

<sup>39</sup> Id. at 19-22.

<sup>40</sup> G.R. No. 247787, March 2, 2021.

<sup>41</sup> *Rollo*, pp. 23-29.

<sup>42</sup> Id. at 36-39.

<sup>43</sup> Id. at 366-401.

<sup>44</sup> G.R. Nos. 210965 & 217623, March 22, 2022.



*Respondent's Arguments*

The Office of the Solicitor General, in its Manifestation and Motion<sup>45</sup> dated September 9, 2022, stated that it is not filing a comment on behalf of the COA. However, it prayed that in the interest of substantial justice, the COA should be given an opportunity to file its own comment, if it so desires.

The LSS filed a Comment dated October 13, 2022, maintaining its position that DBP Circular No. 10 is contrary to Section 2(i) of P.D. No. 1146, Section 24 of CSC Circular No. 1, Section 40 of CSC Memorandum Circular No. 14, Series 1999, and DBM Budget Circular (BC) No. 2002-1 dated January 14, 2022. It insisted that the *post facto* approval by PGMA of DBP's Compensation Plan is in violation of the Omnibus Election Code. It explained that computing the MVLC using gross monthly salary instead of basic salary effectively increased the employees' benefits.<sup>46</sup> It moreover claimed that it is not bound by Our ruling in the *2021 DBP case* because while DBP's Compensation Plan was referred thereto, the issues involved are separate and distinct from each other. That case pertained to the grant of salary increases to DBP officials, while the present case is about the proper computation or formula to be applied in computing the MVLC. Thus, the COA did not commit grave abuse of discretion in issuing the NDs and the assailed Decisions.<sup>47</sup>

Subsequently, the COA stated that under Sections 38 and 39 in relation to Section 43 of the Administrative Code, all approving/certifying officers who participated in the approval of Circular No. 10 are solidarily liable to return the disallowed amounts since they approved/certified the same in violation of pertinent laws, rules, and regulations. As to the employees who received the MVLC, they are liable to refund the disallowed amounts pursuant to the principle of *solution indebiti*.<sup>48</sup>

Meanwhile, the COA argued that DBP was not denied due process since the latter was able to actively participate in the proceedings from the issuance of the AOM to the rendition of the assailed Decisions. Also, although DBP's appeal memorandum was not considered in the LSS Decision, the same was considered by the COA CP in its 2018 Decision. Similarly, the COA asserted that DBP's right to speedy disposition of cases was not violated. It alleged that during the pendency of DBP's case, the COA was in the process of amending its Rules of Procedure, which was later

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<sup>45</sup> *Rollo*, pp. 303-304.

<sup>46</sup> *Id.* at 322-326.

<sup>47</sup> *Id.* at 326-327.

<sup>48</sup> *Id.* at 328-329.

approved on September 15, 2009. The organizational adjustments brought by the amendments affected the COA's proceedings and may have resulted in an unintended delay in resolving the matters before it. Ultimately, the COA prayed for the dismissal of the petition and the denial of DBP's prayer for injunctive relief.<sup>49</sup>

### Issues

The issues before Us are:

1. Whether DBP was denied due process;
2. Whether DBP's right to speedy disposition of cases was violated;
3. Whether the *2021 DBP case* operates as *res judicata* to the present petition.
4. Whether DBP may legally provide a policy defining what constitutes gross monthly compensation in the computation of the MVLC of its officers and employees; and
5. Whether DBP officials and employees who participated in the approval/certification of Circular No. 10, as well as received benefits, therefrom are liable to return the disallowed amounts.

### The Court's Ruling

The petition is partly meritorious.

#### *DBP was not denied due process*

At the outset, the COA did not violate DBP's right to due process. In *Ablong v. Commission on Audit*,<sup>50</sup> We held that due process is satisfied if the party is properly notified of the allegations against him/her and is given an opportunity to defend himself or herself, and such defense was considered by the tribunal in arriving at its own independent conclusions. As long as the

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<sup>49</sup> Id. at 330-333.

<sup>50</sup> G.R. No. 233308, August 18, 2020, citing *Pang v. Commission on Audit-Legal Services Sector*, G.R. No. 217538, June 20, 2017.

party was afforded an opportunity to defend his/her interests in due course, he or she is not denied due process.<sup>51</sup>

Here, the COA issued the LSS Decision while the period for DBP to file its appeal memorandum had not yet lapsed. Thus, the said Decision did not consider the arguments of DBP on appeal. Nevertheless, this procedural defect was cured by the COA CP's issuance of its October 2, 2018 Decision, which duly discussed the arguments of DBP in its Memorandum of Appeal. More importantly, throughout the proceedings from the SA to the COA CP, DBP was able to present its side and defend its position. What is offensive to due process is the denial of the opportunity to be heard.<sup>52</sup>

*DBP's right to speedy disposition of cases was violated*

On the matter of DBP's right to speedy disposition of cases, We find that the COA is guilty of violating the same. Section 16, Article III of the Constitution provides that all persons shall have the right to speedy disposition of their cases before all judicial, quasi-judicial, and administrative bodies. Any party to a case may demand expeditious action from all officials who are tasked with the administration of justice.<sup>53</sup> In determining whether the right to speedy disposition of cases is violated, several factors are considered such as: (a) the length of delay; (b) the reasons for such delay; (c) the assertion or failure to assert such right; and (c) the prejudice caused by the delay.<sup>54</sup>

We measure the length of delay in conjunction with the period for which the COA should have decided the case before it. Under Section 7, Article IX(A), of the Constitution, the COA shall decide any case or matter brought before it within 60 days from its submission for decision or resolution.<sup>55</sup> A case or matter is deemed submitted for decision or resolution upon filing the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself.<sup>56</sup> In this case, DBP filed its Memorandum of Appeal before the COA Cluster Director on August 24, 2009, while the COA Auditor filed a Consolidated Reply Memorandum on

<sup>51</sup> *Development Bank of the Philippines v. Commission on Audit*, 808 Phil. 1001, 1015 (2017).

<sup>52</sup> *Ablong v. Commission on Audit*, G.R. No. 233308, August 18, 2020.

<sup>53</sup> *Navarro v. Commission on Audit Central Office*, 866 Phil. 324, 332 (2019), citing *Coscolluela v. Sandiganbayan*, 714 Phil. 55, 61 (2013).

<sup>54</sup> See *Development Bank of the Philippines v. Commission on Audit*, supra note 40.

<sup>55</sup> See Section 7, Rule IX of the 1997 Revised Rules of Procedure of the Commission on Audit and Section 4, Rule X of the 2009 Revised Rules of Procedure of the Commission on Audit.

<sup>56</sup> See Section 4, Rule III of the 1997 Revised Rules of Procedure of the Commission on Audit and Section 4, Rule III of the 2009 Revised Rules of Procedure of the Commission on Audit.

August 25, 2009.<sup>57</sup> The COA CP rendered the assailed Decision No. 2018-197 on January 30, 2018 or more than eight years from the submission of the Reply Memorandum. Likewise, the COA took its time in resolving DBP's motion for reconsideration of the Decision No. 2018-197. DBP filed the motion on October 17, 2018 but it was only on January 24, 2022 or more than three years after the COA issued Decision No. 2022-072.

Since the delay in the disposition of the case extended to years, way beyond the mandate of the Constitution and the COA's own rules of procedure, it is incumbent upon the Commission to prove that the delay was reasonable, or that the delay was not attributable to it.<sup>58</sup> To justify the delay in this case, the COA argued that it was in the process of amending its Rules of Procedure in 2009 and this might have resulted in unintended delays. We are not persuaded.

The COA itself stated that its new rules was approved on September 15, 2009, while the delay in this case spanned from August 2009 to January 2018 and November 2018 to January 2022 for the appeal and the motion for reconsideration, respectively. Clearly, the COA had already finished the amendments of its rules during the long hiatus of the case. It did not substantiate the so-called "organizational adjustments" brought about by the amendments that caused the delay in the disposition of the case. Hence, such cannot excuse the COA's inaction for a total of 11 years.

Significantly, DBP had also asserted its right to speedy disposition of cases. It filed a Motion to Resolve dated November 23, 2010 followed by two manifestations and motions.<sup>59</sup> It cannot be gainsaid that the delay prejudiced the rights of DBP and its concerned officials and employees. The possibility of being required to reimburse the disallowed amounts hangs over the heads of the bank's employees like a sword of Damocles.<sup>60</sup>

In another case<sup>61</sup> between the COA and DBP, We found the COA guilty of unjustified delay when it took the Commission more than three years to reverse its Decision and almost four years to resolve DBP's motion for reconsideration or a total of seven years. Our disquisition on how such delay prejudiced the involved DBP personnel is on point:

x x x The issues in this case are not complex to justify the delay that attended the proceedings. The subject matter is one of those run-of-the-

<sup>57</sup> *Rollo*, p. 20.

<sup>58</sup> *Navarro v. Commission on Audit Central Office*, supra note 53 at 332.

<sup>59</sup> *Rollo*, pp. 231-233, 235-240, 246-252.

<sup>60</sup> *Development Bank of the Philippines v. Commission on Audit*, supra note 40.

<sup>61</sup> *Id.*

mill disallowance cases that COA encounters in the normal discharge of its quasi-judicial functions. The influx of cases is not a sufficient excuse. There must be special or peculiar circumstances to rationalize the protracted delay. Furthermore, the DBP asserted the right to speedy disposition of its case. The records show that the DBP filed four motions for early resolution during the pendency of its motion for reconsideration. **The delay likewise prejudiced the rights of DBP as an institution and that of the senior officers whose salary increases are suspended and the possibility of being required to reimburse the amount has been hanging over their head like a sword of Damocles. Notably, the speedy disposition of cases is paramount in the administration of justice. It is a truism that justice delayed is justice denied.**<sup>62</sup> (Emphasis supplied)

The delay in the present case is even longer as it took the COA a total of 11 years to finally rule on the appeal and the motion for reconsideration of DBP. Undue prejudice on the part of the bank's officials and employees is therefore more palpable.

*No res judicata*

We reject DBP's argument that Our ruling in the *2021 DBP case* operates as *res judicata* in the concept of conclusiveness of judgment to the present petition. There is conclusiveness of judgment where there is identity of parties in the first and second cases but no identity of causes of action. The first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein.<sup>63</sup>

To recall, the subject of the *2021 DBP case* is the grant of salary increases to eight senior officers of DBP pursuant to DBP's Compensation Plan (the same Compensation Plan involved in the case at bar). The COA SA disallowed the same because the Compensation Plan lacks Presidential approval. The COA Cluster Director affirmed the disallowance. DBP appealed to the COA CP invoking PGMA's *post facto* approval of its Compensation Plan. In its Decision dated February 1, 2012, the COA granted the petition and lifted the notice of disallowance stating that the subsequent approval of the Compensation Plan made the principal issue of the absence of Presidential approval moot and academic. On February 6, 2012, DBP received a copy of the COA Decision but did not file any motion for reconsideration or a petition before Us. On March 2012, Paragan, an officer of DBP, submitted confidential letters to the COA arguing that the *post facto* approval of PGMA is void because it was made within 45 days

<sup>62</sup> Id.

<sup>63</sup> *City Government of Tacloban v. Court of Appeals*, G.R. No. 221554, February 3, 2021, citing *Oropeza Marketing Corp. v. Allied Banking Corp.*, 441 Phil. 551, 564 (2002).

before a regular election. The COA treated the letters as a motion for reconsideration and exercised its power to open and revise settled accounts under the Government Auditing Code. In its Decision dated April 13, 2015, the COA reversed its earlier ruling and held that the increase in salaries of DBP's senior officers has no legal basis. It found that PGMA's approval of the Compensation Plan was illegal for being made 18 days before the May 10, 2010 elections.

DBP elevated the case to Us *via* a petition for *certiorari*. We granted the petition and reinstated the COA Decision dated February 1, 2012, on the following grounds: (1) Paragan is not a real party in interest or aggrieved party entitled to file a motion for reconsideration or appeal; (2) the COA is guilty of unjustified delay in acting on Paragan's Letters and resolving DBP's motion for reconsideration; and (3) the COA's Decision dated February 1, 2012 is already final and executory absent a timely motion for reconsideration or appeal. We did not make any pronouncement regarding the validity of PGMA's *post facto* approval of DBP's Compensation Plan. In fact, under the first ground, We already stated that Paragan had no personality to question the legality of such approval. Thus, the validity of the Compensation Plan was not put into issue in the case. Rather, the heart of the controversy is the propriety of the COA's reopening of an already final and executory Decision.

Conversely, the present petition deals with the COA's disallowance of the monetization of leave benefits of DBP officers and employees computed based on their gross monthly cash compensation pursuant to DBP Circular No. 10. One of the main defenses of DBP is PGMA's subsequent approval of its Compensation Plan, which allegedly included DBP Circular No. 10. Considering that We did not rule on the validity of the Compensation Plan in the *2021 DBP case*, it cannot be said that it operates as *res judicata* to the present case.

Notably, there is also no inconsistency between Our rulings in the *2021 and 2022 DBP cases*. The *2022 DBP case* involves two consolidated petitions seeking to nullify the COA's issuance of NDs on (1) the grant of additional allowances and fringe benefits to DBP officers acting as officers of DBP Subsidiaries in 2006; and (2) the grant of officers' allowance, economic assistance, and merit increase to DBP's officers and employees. In both petitions, DBP averred that the subsequent approval by PGMA of its Compensation Plan rendered the disallowances moot and academic. As will be discussed thoroughly later, We held in the *2022 DBP case* that PGMA's approval was void for being made within the prohibited 45-day period before the May 2010 elections. To risk repetition, the *2021 DBP case* did not touch on the legality of the Compensation Plan.

*The DBP BOD's power to fix the remunerations of the bank's officers and employees is not absolute*

As to the merits of the case, DBP heavily relies on Section 13 of its Revised Charter as authority for computing the MVLC of its officials and employees based on gross monthly cash compensation. Section 13 reads:

Section 13. *Other Officers and Employees.* – **The Board of Directors shall provide for an organization and staff of officers and employees of the Bank and upon recommendation of the President of the Bank, fix their remunerations and other emoluments.** All positions in the Bank shall be governed by the compensation, position classification system and qualification standards approved by the Board of Directors based on a comprehensive job analysis of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plans in the private sector and shall be subject to periodic review by the Board of Directors once every two (2) years, without prejudice to yearly merit or increases based on the Bank's productivity and profitability. **The Bank shall, therefore, be exempt from existing laws, rules, and regulations on compensation, position classification and qualification standard. The Bank shall however, endeavor to make its system conform as closely as possible with the principles under Compensation and Position Classification Act of 1989 (Republic Act No. 6758, as amended).** (Emphases supplied)

In the 2018 case of *Development Bank of the Philippines v. Commission on Audit*,<sup>64</sup> We declared that the authority granted to the DBP BOD under Section 13 is not absolute but remains subject to the principles of the SSL; notwithstanding that DBP is exempt from existing laws on compensation, position classification, and qualification standard. There, the COA disallowed the Governance Forum Productivity Award granted by the DBP BOD to its officers and employees for lack of legal basis. DBP asserted that its charter gives it a free hand in fixing compensation and allowances. In rejecting DBP's claim, We explained that:

Notably, while Sec. 13 of DBP's charter as amended on February 14, 1998, exempts it from existing laws on compensation and position classification, it concludes by expressly stating that DBP's system of compensation shall nonetheless conform to the principles under the SSL. From this, **there is no basis to conclude that the DBP's BOD was conferred unbridled authority to fix the salaries and allowances of its officers and employees. The authority granted DBP to freely fix its compensation structure under which it may grant allowances and monetary awards remains circumscribed by the SSL; it may not entirely depart from the spirit of the guidelines therein.**

<sup>64</sup> 835 Phil. 268 (2018).

**The policy requiring prior Presidential approval upon recommendation from the Secretary of Budget as provided in PD 1597, with respect to the grant of allowances and benefits, was re-affirmed by the Congress in 2009 through *Joint Resolution No. 4*, also known as the *Salary Standardization Law III* which provides that the “coverage, conditions for the grant, including the rates of allowances, benefits, and incentives to all government employees, shall be rationalized in accordance with the policies to be issued by the President upon recommendation of the Department of Budget and Management.” This policy mirrors MO No. 20 issued earlier in 2001, which directed the heads of government-owned and controlled corporations, government financial institutions (GFIs), and subsidiaries exempted from the SSL to implement pay rationalization in all senior officer positions.<sup>65</sup> (Emphases supplied)**

We reiterated this ruling in the *2022 DBP case* where We further noted that the DBP BOD’s power to fix personnel compensation must not only be close as possible with the principle of SSL but must also be in accord with the prevailing rules and regulations issued by the President of the Philippines and/or the DBM.<sup>66</sup> There, We affirmed the COA’s disallowance of grant of merit increases and other additional compensation or allowances because they are not specifically authorized by existing laws and did not have the requisite approval of the President as required under P.D. No. 1597 and Memorandum Order (M.O.) No. 20. Section 6 of P.D. No. 1597 provides the requisite presidential review, through the DBM, of the position classification and compensation plan of an agency exempt from the Office of Compensation and Position Classification.<sup>67</sup> M.O. No. 20 provides that any increase in salary or compensation of government-owned and controlled corporations (GOCCs) and GFIs that is not in accordance with SSL shall be subject to the approval of the President.<sup>68</sup>

Consequently, the threshold issues are: (a) whether DBP Circular No. 10 was in accordance with the rules and regulations existing at the time of its issuance in 2005; and (b) whether it was approved by the President.

We rule in the negative.

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<sup>65</sup> Id. at 277-278.

<sup>66</sup> *Development Bank of the Philippines v. Commission on Audit*, G.R. Nos. 210965 & 217623. March 22, 2022 citing *Philippine Health Insurance Corp. v. Commission on Audit*, G.R. No. 222129, February 2, 2021.

<sup>67</sup> *Philippine Economic Zone Authority v. Commission on Audit*, 797 Phil. 117 (2016).

<sup>68</sup> Id. at 124.



MLC is defined as the payment in advance under prescribed limits and subject to specified terms and conditions of the money value of leave credits of an employee upon his request without actually going on leave.<sup>69</sup>

Under CSC Memorandum Circular No. 41, series of 1998, which amended Rules I and XVI, of the Omnibus Rules Implementing Book V of the Administrative Code of 1987 (Omnibus Rules on Leave), the formula to be used for the computation of leave monetization is as follows:

$$\frac{\text{Monthly Salary}}{22 \text{ Working Days}} \times \text{No. of days to be Monetized} = \text{Money Value of the monetized leave}^{70}$$

On September 4, 2003, the CSC issued Memorandum Circular No. 8, Series of 2003 (MC No. 8-03) which amended the foregoing computation by adopting the formula in Section 40 of CSC Memorandum Circular No. 14, Series of 1999<sup>71</sup> (CSC MC No. 14-99) on the computation of Terminal Leave Benefits (TLB). Thus, the CSC provided that either of the following formula shall be used for the computation of the MLC:

$$\text{Monthly Salary} \times \text{No. of days to be monetized} \times \text{C.F. (.0478087)*} = \text{Money value of the monetized leave}$$

**OR**

$$\frac{\text{Monthly Salary}}{20.916667^{**}} \times \text{No. of days to be Monetized} = \text{Money Value of the monetized leave}$$

\* Constant Factor based on Section 40 of CSC MC No. 14, S., 1999

\*\* Equivalent number of days in a month for computation of MLC based on the total number of working days per year (251) [Section 40 of CSC MC No. 14, s. 1999] divided by number of months in a year (12)

Concomitantly, DBM issued BC No. 2002-1 dated January 14, 2002, titled: "Computation and Funding of Terminal Leave Benefits and Monetization of Leave Credits," addressed to the heads of department, bureaus, offices, and agencies of the National Government, GOCCs, GFIs (like DBP), and chief executives of Local Government Units. Section 3.1.2

<sup>69</sup> Rule I(p)(7), Amendments to Rules I and XVI of the Omnibus Rules Implementing Book V of the Administrative Code of 1987, CSC Memorandum Circular No. 41-98, December 24, 1998.

<sup>70</sup> Rule XVI, Section 24 of the Omnibus Rules on Leaves.

<sup>71</sup> Additional Provisions and Amendments to CSC Memorandum Circular No. 41, 1998.

of BC No. 2002-1 states that MLC shall be computed in accordance with the formula used in the computation of TLB which is:

3.1 On the Computation

**3.1.1 Pursuant to Section 40 of CSC MC No. 14, TLB shall be computed as follows:**

$$\text{TLB} = S \times D \times \text{CF}$$

Where: TLB = Terminal leave benefits  
 S = **Highest monthly salary received**  
 D = Number of accumulated vacation and sick leave credits  
 CF = Constant factor which is .0478087

The constant factor (CF) was derived from this formula:  

$$\frac{\text{Number of months in a year}}{\text{No. of days in a year less the sum of Saturdays, Sundays and Legal Holidays in a year}}$$

365 = Days in a year  
 104 = Saturdays, Sundays in a year  
 10 = Legal holidays (as provided under EO 292) in a year

$$\frac{12}{365-(104+10)} = \frac{12}{251} = .0478087$$

Based on the above formula, the equivalent number of days in a month for purposes of computation of TLB is 20.91667.

**3.1.2 The monetization of leave credits shall be computed in accordance with the above formula. (Emphases supplied)**

Conformably with the above-stated, the formula for the computation MLC explicitly refers to and is based on "monthly salary" and not on "gross monthly cash compensation". In *Paredes v. COA*<sup>72</sup> (*Paredes*), We construed the term "monthly salary" for purposes of computing the money value of TLB to exclude bonuses and allowances. We did not include therein petitioner's representation allowance in computing his TLB.

<sup>72</sup> 201 Phil. 644 (1982).

Considering that the formula for computing MLC was adopted from the computation of TLB, We see no reason not to apply the definition of “monthly salary” as stated in *Paredes* in computing MLC. Accordingly, in MLC, bonuses and allowances of personnel are not included. Simply put, only the basic pay shall be the basis of the MVLC.

In the instant case, prior to the issuance of the subject DBP Circular No. 10, DBP under Circular No. 39 dated October 3, 2002 used “highest monthly salary received” as the base in computing the MLC. However, on March 7, 2005, DBP issued Circular No. 10,<sup>73</sup> amending the formula for the computation of the MVLC of its officials and employees, by using “gross monthly cash compensation” as base which, in addition to basic salary, included, officers’ allowances, RATA, PERA, ADCOM, meal, children’s and family allowances, and longevity pay.

Evidently, DBP Circular No. 10 is inconsistent with the Omnibus Rules on Leave, as amended by CSC MC No. 14-99 and CSC MC No. 8-03, as it uses gross monthly cash compensation which includes various allowances as basis for the computation of the MVLC, instead of the prescribed base of “monthly salary.”

Meanwhile, DBP harps on the alleged *post facto* approval by PGMA of the bank’s Compensation Plan (for year 1999 onwards) which allegedly included Circular No. 10. DBP’s Letter to PGMA dated April 22, 2010 (DBP’s Letter) sought to confirm its BOD’s authority to approve a compensation plan for DBP’s personnel. DBP’s Letter reads:

Pursuant to Section 13 of the Revised DBP Charter exempting the Bank from the Salary Standardization Law (SSL), the DBP Board of Directors approved a Compensation Plan for DBP officers and employees comparable with that of the private sector. The Plan, which incorporates performance as a key determinant of compensation and rewards, was made effective starting March 1999. Although the Plan was subjected to subsequent updating and refinements by the Board, no new items were added since then. The Plan consists of 1) a basic salary structure distinct from the SSL structure; 2) mandatory benefits enjoyed by all government employees; and 3) other emoluments, allowances and benefits in addition to SSL benefits (Annex A is DBP’s updated basic salary structure and benefits in addition to SSL benefits).

The implementation of the Compensation Plan has driven the Bank’s performance. Annual net income grew from less than P2 Billion in 2001 to an all-time high of P6 Billion in 2009. The Bank also paid a total of P18.3 Billion in taxes from 2001 to 2009. For 2009 alone, it has

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<sup>73</sup> *Rollo*, p. 69.

declared and remitted P2.5 B in dividends in favor of the National Government.

In 2007, however, the Commission on Audit (COA), citing Memorandum Order (M.O.) No.[.] 20 dated June 25, 2001 and DBM Cir. Letter No. 2003-10, s. 2003, disallowed several components of the Plan for lack of prior approval by the Office of the President. DBP has appealed the disallowances, raising the legal issue that M.O. No. 20 does not apply to DBP and that COA's interpretation dilutes the authority of the Board of Directors to formulate and approve DBP's Compensation Plan as provided for in the DBP Charter.

In June 2009, Joint Resolution No. 4 was promulgated requiring SSL-exempt agencies to seek prior approval of the Office of the President before it can implement or grant any increases or new benefits. In the interest of stability, there is a need to finally resolve issues arising from the adoption, implementation, and administration of DBP's Compensation Plan which the Board of Directors had approved, refined[,] and allowed to be implemented prior to Joint Resolution No. 4 and even prior to M.O. No. 20. Further, since Joint Resolution No. 4 has the force of law, DBP shall henceforth comply with it. Accordingly, in Board Resolution No. 0045 dated February 26, 2010, the Board of Directors resolved as follows:

**THEREFORE, be it resolved, as it is hereby resolved, to seek CONFIRMATION by the Office of the President of the Philippines of the power and authority of the DBP Board of Directors, independently of M.O. No. 20, to approve and allow the implementation and subsequent refinements of DBP's Compensation Plan, including but not limited to the following specific components of the Plan:**

- (1) *Basic salary structure as refined and reformulated (Annex A), including integration to basic pay of officers' allowance, meal allowance and longevity pay; provided that in the continuing implementation of the structure, DBP basic salary levels shall at least be equal to the basic salary levels of equivalent positions in SSL-covered agencies as adjusted under Joint Resolution No. 4;*
- (2) *Continuing implementation of benefits outside SSL (Annex B), including the Bank's motor vehicle lease-purchase program;*
- (3) *Grant of annual merit increases;*
- (4) *Implementation of DBP's Early Retirement Incentive Program (ERIP), the adoption and implementation of which has been recognized by the DBM as compliance with the government's rationalization plan as mandated by Executive Order No. 366 and by the Department of Finance as within the DBP Board's authority (pertinent letters of the DBM and of the Secretary of Finance to DBP are Annexes C and D); [and]*

*(5) Authority given to DBP officers serving in DBP's subsidiaries to receive allowances and other benefits from such subsidiaries, provided such officers were properly designated and authorized as such in accordance applicable rules.*

*Passed by the DBP Board of Directors on the 26th day of February 2010.*

In view of the foregoing, we respectfully request Her Excellency's confirmation of the implementation of DBP's Compensation Plan from 1999 onward as authorized by the DBP Board of Directors.

(Sgd.)  
REYNALDO G. DAVID  
President and CEO  
~~APPROVED/DISAPPROVED~~

(Sgd.)  
PATRICIA A. STO. TOMAS  
Chairman  
*[but not to include members of the Board. Approval is good for the period up to June 30, 2010.]*

(Sgd.)  
H.E. GLORIA MACAPAGAL ARROYO  
President, Republic of the Philippines<sup>74</sup>  
(Emphases supplied; italics in the original)

PGMA approved DBP's Compensation Plan with the handwritten note that it would not include members of the BOD and the approval is good until June 30, 2010.

A cursory review of DBP's Letter and its annexes would show that DBP's policy to compute its personnel's MVLC based on gross monthly cash compensation is not included in the Compensation Plan. Even if Circular No. 10 was included in the Compensation Plan approved by PGMA, We already held in the *2022 DBP case* – which involves the same Compensation Plan subject of this case – that PGMA's approval was invalid.

*First*, the presidential approval was not reduced to any formal memorandum but merely in the form of the president's signature affixed at the end of DBP's Letter. *Second*, presidential approval of a new compensation and benefits scheme, including the grant of allowances, which is unauthorized by law will not stop the State from correcting the erroneous application of a statute. *Third*, PGMA's approval of DBP's Compensation Plan was void because it was made during the prohibited period under the Omnibus Election Code, to wit:

<sup>74</sup> Id. at 228-229.

Moreover, as noted by COA, the President's approval was made on 22 April 2010, merely 18 days before the 10 May 2010 National and Local Elections. Under Section 261 (g)(2) of Batas Pambansa Blg. 881, otherwise known as the "Omnibus Election Code of the Philippines," the grant of increase of salary or remuneration or privilege to any government official or employee is prohibited during the period of 45 days before a regular election. **Thus, President Arroyo's approval of DBP's authority to approve the compensation plan is clearly void because it was made within the prohibited 45-day period before the 10 May 2010 elections. That the benefits approved refer to benefits implemented long before the president's approval during the prohibited period does not make such approval valid.** It bears stressing that petitioners precisely sought the president's approval or confirmation to validate the unauthorized grant of merit increases, economic assistance, and integration of officers' allowance.<sup>75</sup> (Emphasis supplied)

### *Liability of DBP personnel*

While there were sufficient grounds for the issuance of the NDs, We find it necessary to review the liabilities of the DBP officers and employees to return the disallowed amount.

In *Madera v. Commission on Audit*<sup>76</sup> (*Madera*), We provided the guidelines on the liability of government officials and employees affected by the disallowance of benefits and compensations that are upheld by the Court, 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 more passive recipients – are liable to return the disallowed amounts

<sup>75</sup> *Development Bank of the Philippines v. Commission on Audit*, supra note 44.

<sup>76</sup> G.R. No. 244128, September 8, 2020; See also *Development Bank of the Philippines v. Commission on Audit*, supra note 44.

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.<sup>77</sup>

With respect to the DBP officers who approved and certified the disallowed transactions pursuant to DBP Circular No. 10, Rules 2a and 2b under Our pronouncement in *Madera* shall apply. The said rules are jurisprudentially anchored on Sections 38<sup>78</sup> and 39<sup>79</sup> Chapter 9, Book I of the Administrative Code of 1987, which provide that government officials who approved or certified the grant of disallowed benefits could only be civilly liable to return the amount thereof when they acted in evident bad faith, with malice, or if they were grossly negligent in the performance of their official duties.<sup>80</sup>

In *Ancheta v. Commission on Audit*,<sup>81</sup> We recognized the following badges of good faith and diligence that may be considered to absolve the approving or certifying officers' liability, viz.:

- (1) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code;
- (2) In-house or Department of Justice legal opinion;
- (3) that there is no precedent disallowing a similar case in jurisprudence;
- (4) that it is traditionally practiced within the agency and no prior disallowance has been issued; or
- (5) with regard the question of law, that there is a reasonable textual interpretation on its legality.<sup>82</sup>

<sup>77</sup> Id.

<sup>78</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.

x x x x

(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>79</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>80</sup> *Abejo v. Commission on Audit*, G.R. No. 251967, June 14, 2022.

<sup>81</sup> G.R. No. 236725, February 2, 2021.

<sup>82</sup> Id.

On the other hand, recipients are liable to refund, regardless of good faith, on the basis of *solutio indebiti* and unjust enrichment,<sup>83</sup> considering that when a disbursement is adjudged to be illegal, irregular, excessive, extravagant, and/or unconscionable, an individual's receipt of any portion thereof is regarded as erroneous.<sup>84</sup> They may be excused from this liability only when: (1) they are able to show that the amounts they received were genuinely given in consideration of the services rendered (Rule 2c of *Madera*); or (2) the Court excuses them based on undue prejudice, social justice considerations, or the *bona fide* exceptions as will be determined on a case-to-case basis (Rule 2d of *Madera*).<sup>85</sup>

Notably, in *Abellanosa v. Commission on Audit*<sup>86</sup> (*Abellanosa*), a payee may benefit from exception under Rule 2c of *Madera* only when the following conditions concur: (a) if the personnel incentive or benefit has proper basis in law but is only disallowed due to irregularities that are merely procedural in nature; and (b) 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.<sup>87</sup>

Similarly, in *Abellanosa*, We noted that for the exception under Rule 2d of *Madera* to apply, there must be a *bona fide* instance that would strongly impel the Court to prevent a clear inequity arising from a directive to return. It is only in highly exceptional circumstances, 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. Otherwise, Rules 2c and 2d of *Madera* could be used as a jurisprudential loophole to cause the government fiscal leakage and debilitating loss. This is not the clear intention of the Court in *Madera*.<sup>88</sup>

Significantly, in *Cagayan De Oro City Water District v. Commission on Audit*<sup>89</sup> (*Cagayan De Oro City Water District*), We laid down the considerations in determining whether a refund can be excused under Rule 2d of *Madera*, to wit:

In sum, this Court pronounces the following considerations in determining whether or not a refund can be excused under Rule 2d of *Madera*:

<sup>83</sup> *Velasquez v. Commission on Audit*, G.R. No. 243503, September 15, 2020.

<sup>84</sup> *Philippine Health Insurance Corp. v. Commission on Audit*, G.R. No. 250787, September 27, 2022.

<sup>85</sup> *Id.*

<sup>86</sup> G.R. No. 185806, November 17, 2020.

<sup>87</sup> *Philippine Health Insurance Corp. v. Commission on Audit*, supra note 83.

<sup>88</sup> *Abellanosa v. Commission on Audit*, supra note 85.

<sup>89</sup> G.R. No. 213789, April 27, 2021.



1. The Court shall evaluate the nature and purpose of the disallowed allowances and benefits. Recipients must prove with substantial evidence (1) the nature and purpose of disallowed allowances and benefits, and (2) the existence and truthfulness of its factual basis. Recipients of disallowed allowances and benefits proved to be granted for legitimate humanitarian and compelling grounds shall be excused from making a refund due to equity and social justice considerations.
2. The Court shall consider the lapse of time between the receipt of the allowances and benefits, and the issuance of the notice of disallowance or any similar notice indicating its possible illegality or irregularity. Absent any circumstances the Court may deem sufficient, the lapse of three (3) years without any such notice shall be sufficient to excuse recipients from making a refund.

However, this three (3) year period rule shall not apply in favor of persons found to have actively participated in fraudulent transactions, i.e., those found culpable in Special Audits or Fraud Audits conducted by the COA.<sup>90</sup>

Guided by the foregoing case laws, We excuse the certifying and approving officers as well as recipients of benefits under DBP Circular No. 10 from refunding the disallowed amounts.

*First*, We appreciate good faith on the part of the DBP BOD and DBP's officers who approved or certified the disallowed MVLC as they believed that Section 13 of DBP's Revised Charter authorizes them to fix the compensation of the bank's personnel, including the determination of what "month salary" is for purposes of MLC.<sup>91</sup> Also, at the time that DBP issued Circular No. 10 there was yet a jurisprudence interpreting Section 13 of DBP's Revised Charter.

In the *2022 DBP case*, We, likewise, excused the officers who approved or certified the grant of disallowed benefits (*i.e.*, grant of merit increase to DBP officers and employees, integration of officers' allowance to basic pay, and grant of economic assistance to DBP employees) because they acted in good faith relying on their exemption from the SSL and believing that they were authorized under DBP's Revised Charter to approve the compensation plan for the DBP personnel, including the grant of economic assistance and merit increases, even without presidential approval.<sup>92</sup>

<sup>90</sup> Id. See also *Abella v. Commission on Audit Proper*, G.R. No. 238940, April 19, 2022.

<sup>91</sup> See *Development Bank of the Philippines v. Commission on Audit*, supra note 44.

<sup>92</sup> Id.

*Second*, as to the recipients of the MVLC, We absolve them from returning the disallowed amounts under Rule 2d of *Madera* on the ground of undue prejudice caused by the COA's violation of their right to speedy disposition of cases. While it is true that the NDs, in this case, were issued within two years from the disbursement of the disallowed amounts or within the threshold three-year period mentioned in *Cagayan De Oro City Water District*, the Court, in at least two instances, upheld the recipient's right to speedy disposition of cases *vis-à-vis* the COA's inordinate delay in ruling on the appeal before it.

In *Navarro v. Commission on Audit Central Office*,<sup>93</sup> We granted the petition for *certiorari* praying for the reversal of the rulings of the COA disallowing the procurement of supplementary and reference materials on account of the Commission's violation of therein petitioners' constitutional right to speedy disposition of cases. There, the COA failed to establish that the delay of more than seven years was reasonable or that petitioners caused the same.

In *Rosario v. Commission on Audit*<sup>94</sup> (*Rosario*), We reversed the rulings of the COA on the ground of the COA's inexplicable delay of 11 years in disposing of therein petitioner's case. We noted that petitioner no longer had access to the Bids and Awards Committee's documents relative to the procurement of modular workstations, which impeded her ability to raise a complete defense against her supposed liability in the notice of disallowance. Our ruling in *Rosario* is enlightening:

Verily, the COA Proper violated petitioner's constitutional right to speedy disposition of her case. The inordinate delay by which the COA Proper disposed of petitioner's case warrants the reversal of its rulings. To continue with this case is to further subject petitioner to needless distress and constant worry, and violation of her constitutional right. To quote the Court's opening statement in *Magante v. Sandiganbayan*: Like the proverbial sharp sword of Damocles, the protracted pendency of a case hangs overhead by the slenderest single strand. And as Cicero quipped: "x x there can be nothing happy for the person over whom some fear always looms."<sup>95</sup>

Here, as earlier discussed, the COA failed to discharge its burden of proving that the aggregate 11 years delay in the resolution of DBP's appeal (8 years) and motion for reconsideration (3 years) was due to the fault of DBP or that it was reasonable under the circumstances. In particular, the COA CP took more than three years to dispose of the motion for

<sup>93</sup> 866 Phil. 324 (2019).

<sup>94</sup> G.R. No. 253686, June 29, 2021.

<sup>95</sup> *Id.*

reconsideration, yet in its Decision No. 2022-072, it found that DBP's arguments were a mere rehash of those already raised in its appeal and manifestations and motions.<sup>96</sup> This shows that the said motion did not involve a difficult question of law that would justify an extended period to answer. Indeed, the unjustified delay of the COA CP is vexatious and oppressive on the part of DBP and its officers and employees. For a total of 11 years, they were subjected to worry and distress that they might be liable to return ₱26,182,467.36 representing the disallowed amounts in the payment of the MVLC. We note that the MVLC subject of the NDs in this case covers the period of March to December 2005. The disbursements were made 18 years ago. DBP alleged and the COA did not dispute, that many of the employees named accountable in the NDs have retired or otherwise separated from the bank, but due to the issue of the disallowances, no final settlement could be effected to their prejudice. DBP also claimed that the disallowances had long been outstanding in its books and had affected its financial standing and status before regulating bodies.

Meanwhile, We are aware that in the *2022 DBP case*, this Court did not absolve the recipients of the disallowed benefits from returning them. We therein found no extraordinary or highly meritorious considerations to exonerate the payees under Rules 2c and/or 2d of *Madera*. Quite the contrary, in the present case, We find that the COA violated the constitutional right to speedy disposition of cases of the recipients of the disallowed amounts. No such allegation or similar violation was found in the *2022 DBP case*.


In fine, the COA, as a Constitutional Commission, should not only safeguard the interest of the Government. It must be equally conscious of protecting the rights of all the parties before it. However, this is not the first time that the COA's rulings were reversed due to its violation of a person's right to speedy disposition of cases. If the COA's inexplicable delays in the resolution of cases continue, it would end up prejudicing the very institution that it seeks to protect – the Government.

**WHEREFORE**, the petition is **PARTIALLY GRANTED**. The Decision No. 2018-197 dated January 30, 2018 and the Decision No. 2022-072 dated January 24, 2022 of the Commission on Audit are **AFFIRMED** with **MODIFICATION** in that the persons identified as liable under Notices of Disallowance Nos. HRM-MVLC-2006-04 (01-01) to HRM-MVLC-2006-04 (01-03), all dated February 28, 2007 and Notice of Disallowance No. HRM-MVLC-2006-04 (03) dated July 4, 2007 are not required to refund the disallowed amounts therein.

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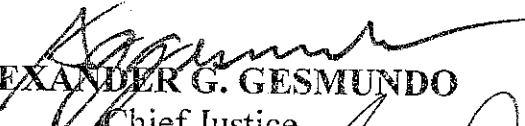
<sup>96</sup> *Rollo*, p. 61.

**SO ORDERED.**



**SAMUEL H. GAERLAN**  
Associate Justice

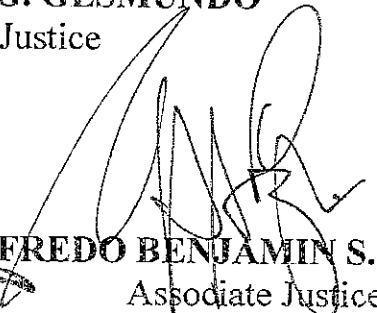
WE CONCUR:




**ALEXANDER G. GESMUNDO**  
Chief Justice




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




**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



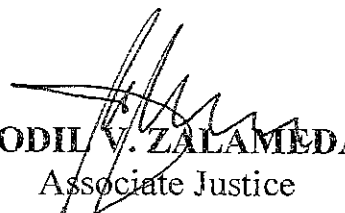
**RAMON PAUL L. HERNANDO**  
Associate Justice



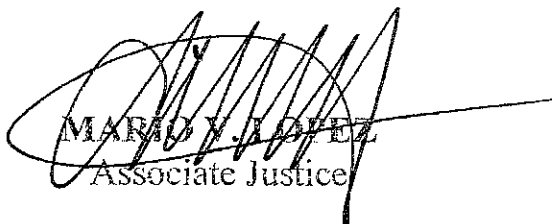
**AMY C. LAZARO-JAVIER**  
Associate Justice



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



**RODIL V. ZALAMEDA**  
Associate Justice



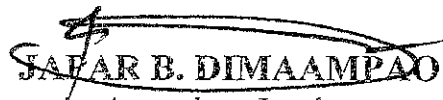
**MARIO V. LOPEZ**  
Associate Justice




**RICARDO R. ROSARIO**  
Associate Justice

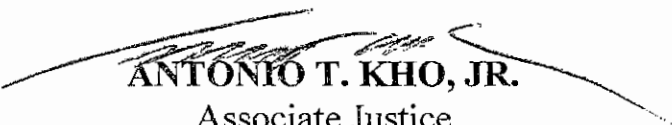


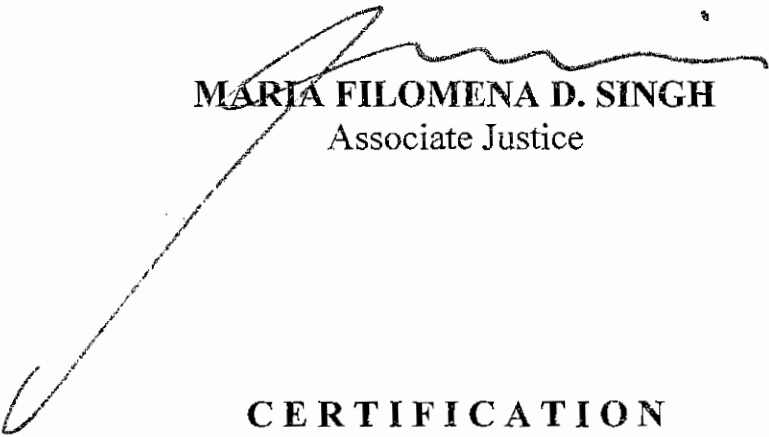
**JHOSEP Y. LOPEZ**  
Associate Justice



**JAFAR B. DIMAAMPAO**  
Associate Justice

  
**JOSE MIDAS P. MARQUEZ**  
Associate Justice

  
**ANTONIO T. KHO, JR.**  
Associate Justice

  
**MARIA FILOMENA D. SINGH**  
Associate Justice

**CERTIFICATION**

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

  
**ALEXANDER G. GESMUNDO**  
Chief Justice

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