Republic of the Philippines
Supreme Court
Manila

EN BANC

RAUL F. MACALINO,
Petitioner,

-versus-

COMMISSION ON AUDIT,
Respondent.

G.R. No. 253199

Present:

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

Promulgated:
November 14, 2023

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DECISION

MARQUEZ, *J.*:

Before the Court is a losing vice mayoralty candidate who was designated as a legal officer less than a year from his electoral loss, pleading that his salaries and allowances as a legal officer be sustained.

We cannot do so.

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* On official leave.
** On official business.

In a Petition for *Certiorari*[1] under Rule 64 in relation to Rule 65 of the Rules of Court, petitioner Raul F. Macalino (Macalino) seeks to reverse and set aside the August 9, 2019 Decision[2] No. 2019-305 and the January 21, 2020 Resolution[3] of the COA Proper. Said rulings affirmed the November 12, 2014 Decision of the COA Regional Office No. III sustaining the Notice of Disallowance (ND) No. 14-001-100-(13) dated March 28, 2014 on the payment of Macalino's wages and allowances for the period of July 1, 2013 to December 31, 2013, for being violative of Article IX-B, Section 6,[4] Constitution, and Section 94,[5] Republic Act No. 7160, otherwise known as the "Local Government Code of 1991."

The facts are undisputed.

Macalino ran and lost as vice mayor of San Fernando City, Pampanga, in the May 2013 elections.[6] On July 1, 2013, the Municipal Government of Mexico, Pampanga, through Mayor Roy D. Manalastas (Mayor Manalastas), entered into a contract of service with Macalino for the latter to perform the duties of a Legal Officer II from June 1, 2013 to July 30, 2014, with a salary of PHP 26,125.00 per month.[7]

In ND No. 14-001-100-(13)[8] dated March 28, 2014 addressed to Mayor Manalastas, the Office of the Audit Team Leader of Audit Group H – Team 6, COA stated that the PHP 149,015.00, representing the wages and the Personnel Economic Relief Assistance (PERA) received by Macalino, was disallowed in audit since the amount was paid to a losing candidate in the May 2013 elections in violation of the prohibition under Article IX-B, Section 6, Constitution, and Section 94, Local Government Code. The following persons were held liable for the return of the disallowed sum, as stated in the ND:

> The following persons have been determined to be liable for the transaction:
>
> | Name | Position/Designation | Nature of Participation in the Transaction |
> |---|---|---|
> | 1. Leonila S. Ignacio | Human Resource Officer | Prepared the appointment of the job order personnel |

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1 *Rollo*, pp. 3–22.

2 *Id.* at 23–29.

3 *Id.* at 30. Signed by Chairperson Michael G. Aguinaldo and Commissioners Jose A. Fabia and Roland C. Pondoc of the Commission on Audit, Quezon City.

4 SECTION 6. No candidate who has lost in any election shall, within one year after such election, be appointed to any office in the Government or any government-owned or controlled corporations or in any of their subsidiaries.

5 Sec. 94. *Appointment of Elective and Appointive Local Officials: Candidates Who Lost in an Election.* —

. . . .

(b) Except for losing candidates in barangay elections, no candidate who lost in any election shall, within one (1) year after such election, be appointed to any office in the Government or any government-owned or controlled corporations or in any of their subsidiaries.

6 *Rollo*, p. 24.

7 *Id.*

8 *Id.* at 42–43.

2. Alice A. Reyes	Municipal Budget Officer	Signed the Obligation Request
3. Perlita T. Lagman	Municipal Accountant	Signed the DV as to complete documentation
4. Emmanuel R. Manalo	Municipal Administrator	Signed the Obligation Request
5. Roy D. Manalastas	Municipal Mayor	Approved the appointment, payrolls, and the Obligation Request
6. Maritess B. Miranda	Disbursing Officer	Paid the wages and certified the payrolls
7. Avelina P. Reyes	Municipal Treasurer	Signed the payrolls and DV as to availability of funds
8. Atty. Raul F. Macalino	Legal Officer II (JO)	Received payment of wages

> Please direct the aforementioned persons liable to settle immediately the said disallowance. Audit disallowance not appealed within six (6) months from receipt hereof shall become final and executory as prescribed under Sections 48 and 51 of P.D. 1445.[9]

Macalino filed an appeal[10] before the Regional Office No. III, COA, which affirmed the subject ND in its Decision[11] dated November 12, 2014. The said Office stated that Macalino ran and lost in the May 2013 elections for vice mayor in San Fernando City, Pampanga, and that his designation as Legal Officer II of Mexico, Pampanga, was in violation of the Constitution, the Local Government Code, and Rule XI, Section 2, Civil Service Commission (CSC) Memorandum Circular No. 40-98.

On March 19, 2015, Macalino filed an appeal before the Adjudication and Settlement Board of COA,[12] which the COA Commission Proper treated as a petition for review. On August 9, 2019, the COA Proper denied the petition. The dispositive portion of the Decision reads:

> **WHEREFORE**, premises considered, the Petition for Review of Atty. Raul F. Macalino, Legal Officer II, Municipal Government of Mexico, Pampanga, is hereby **DENIED**. Accordingly, Commission on Audit Regional Office No. III Decision No. 2014-91 dated November 12, 2014, which sustained Notice of Disallowance No. 141-[001-]100(13) dated March 28, 2014, on the payment of wages and Personnel Economic Relief Allowance for the period of July 1, 2013 to December 31, 2013, in the total amount of [PHP] 149,015.00, is hereby **AFFIRMED**. However, Ms. Maritess B. Miranda, Disbursing Officer of the municipality, is excluded from the liability to refund the disallowed amount.[13]

Hence, the instant Petition for *Certiorari*.

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9 *Id.* at 43.
10 *Id.* at 44–52.
11 *Id.* at 55–59. Signed by Regional Director Ma. Mileguas M. Leyno.
12 *Id.* at 60–70.
13 *Id.* at 27–28.

Article IX-B, Section 6, Constitution, is clear as day. It prohibits those who lost in the election from being appointed to any government position within one year of such election. Thus:

> SECTION 6. No candidate who has lost in any election shall, within one year after such election, be appointed to any office in the Government or any government-owned or controlled corporations or in any of their subsidiaries.

Section 94(b), Local Government Code, provides the same prohibition:

> Sec. 94. *Appointment of Elective and Appointive Local Officials:* ***Candidates Who Lost in an Election.*** — . . . .
>
> (b) Except for losing candidates in barangay elections, **no candidate who lost in any election shall, within one (1) year after such election, be appointed to any office in the Government or any government-owned or controlled corporations or in any of their subsidiaries.** (Emphasis supplied)

Undoubtedly, Section 6, Article IX-B, Constitution, and Section 94(b), Local Government Code, expressly disallow losing candidates in any election within 1 year after such election to be appointed to any office in the government or any government-owned or controlled corporations (GOCCs) or in any of their subsidiaries.

It is the duty of the Court to apply the law as it is worded.[14] Under the plain-meaning rule or *verba legis*, wherever possible, the words used in the Constitution must be given their ordinary meaning except where technical terms are employed.[15] The *raison d'être* for the rule is essentially two-fold: *First*, it is assumed that the words in which constitutional provisions are couched express the objective sought to be attained; and *second*, the Constitution is not primarily a lawyer's document but essentially that of the people, in whose consciousness it should ever be present as an important condition for the rule of law to prevail. [16]

In *Francisco, Jr. v. House of Representatives*,[17] the Court, citing *J.M. Tuason & Co., Inc. v. Land Tenure Administration*,[18] elaborated:

> *We look to the language of the document itself in our search for its meaning. We do not of course stop there, but that is where we begin. It is to be assumed that the words in which constitutional provisions are couched express the objective sought to be attained. They are to be given their ordinary meaning except where technical terms are employed in which case the significance thus attached to them prevails.* As

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[14] *H. Villarica Pawnshop, Inc. v. Social Security Commission*, 824 Phil. 613, 628 (2018) [Per J. Gesmundo, Third Division].
[15] *Kida v. Senate of the Philippines*, 683 Phil. 198, 218 (2012) [Per J. Brion, *En Banc*].
[16] *Chavez v. Judicial and Bar Council*, 691 Phil. 173, 200 (2013) [Per J. Mendoza, *En Banc*].
[17] 460 Phil. 830 (2003) [Per J. Carpio-Morales, *En Banc*].
[18] 142 Phil. 393, 405–406 (1970) [Per J. Fernando, *En Banc*].

> the Constitution is *not primarily a lawyer's document*, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, *its language as much as possible should be understood in the sense they have in common use. What it says according to the text of the provision to be construed compels acceptance* and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say. Thus these are the cases where the need for construction is reduced to a minimum.[19]

The plain-meaning rule or *verba legis* also applies to statutes. The Court in *Victoria v. Commission on Elections*,[20] citing the case of *Globe-Mackay Cable and Radio Corporation v. National Labor Relations Commission*,[21] elucidated that:

> Under the principles of statutory construction, if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This plain-meaning rule or *verba legis* derived from the maxim *index animi sermo est* (speech is the index of intention) rests on the valid presumption that the words employed by the legislature in a statute correctly express its intent or will and preclude the court from construing it differently. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute. *Verba legis non est recedendum*, or from the words of a statute there should be no departure.[22]

In applying the above principle of constitutional and statutory construction, the Court cannot deviate from the clear mandate of the Constitution and the Local Government Code which prohibits the appointment in any government office of a losing candidate within one year from the election where he or she lost. Indeed, as astutely pointed out by Associate Justice Henri Jean Paul B. Inting, the law seeks to thwart the pernicious practice of rewarding a candidate who lost in an election, or so called "political lame ducks," with appointments in government positions. The prohibition against losing candidates is a recognition of political will—it means that the people rejected the losing candidate and did not want him or her to occupy a public office. Thus, the electorate's volition will be flouted if a candidate is immediately appointed to an office in the government after losing an election bid.[23]

Macalino argues that he did not violate the one-year prohibition under the Constitution and the Local Government Code. He contends that since his appointment was made under a contract of service, he is not covered by the aforementioned constitutional and statutory prohibition; that taking an oath of office is a qualifying requirement for public office, which is a prerequisite to

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[19] *Francisco, Jr. v. House of Representatives*, 460 Phil. 830, 884–885 (2003) [Per J. Carpio-Morales, *En Banc*].

[20] 299 Phil. 263 (1994) [Per J. Quiason, *En Banc*].

[21] 283 Phil. 649, 660 (1992) [Per J. Romero, *En Banc*].

[22] *Victoria v. Commission on Elections*, 299 Phil. 263, 268 (1994) [Per J. Quiason, *En Banc*].

[23] *See* J. Inting, Reflections, pp. 2–3.

the full investiture of the office; that under the contract of service, his tenure as Legal Officer did not require him to take an oath of office, and hence he was never appointed to such public office; and that there was no circumvention of the one-year ban because he ran and lost in the 2013 Vice-Mayoralty race in San Fernando City, Pampanga while he was appointed in Mexico, Pampanga.

Not quite.

It should be noted that both the Constitution and the Local Government Code explicitly use the phrase "any office in the Government or any government-owned or controlled corporations or in any of their subsidiaries." Basic is the rule that where the law does not distinguish, the courts should not distinguish. The maxim "*Ubi lex non distinguit, nec nos distinguere debemus*" emphasizes that no distinction should be made in the application of the law where none has been indicated. Courts are tasked only with interpreting the law; it cannot read into the law what is not written therein.[24] Firstly, the drafters of the fundamental law, in making no qualification in the use of a general word or expression, must have intended no distinction at all. Secondly, the courts could only distinguish where there are facts or circumstances showing that the lawgiver intended a distinction or qualification. In such a case, the courts would merely give effect to the lawgiver's intent.[25]

Macalino cannot simply disregard the one-year prohibition by asserting that the appointment in question is not of a permanent nature or public office but rather under a contract of service that does not require the taking of an oath of office and that such appointment was made in a different jurisdiction than the one in which he ran and lost in the election. Such an argument is ludicrous, as it contradicts the clear and unambiguous provisions of both the Constitution and the Local Government Code. To interpret the prohibition selectively or to allow exceptions based on different interpretations that would allow a losing candidate to be appointed would open the door to potential abuses. It is the duty of this Court to uphold the Constitution, and in this case, the one-year prohibition which stands as an enforceable restriction on the appointment or hiring of losing candidates from such election to any government offices including GOCCs or in any of their subsidiaries. Therefore, the subject prohibition applies to all losing candidates regardless of the position and the place or jurisdiction of the office in which they will be appointed.

In his effort to sway the Court, Macalino proffers a distinction between contracts of service and job orders, on one hand, and *plantilla* appointments, on the other, positing that work rendered under the former are non-governmental services which do not have to be submitted for approval as

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[24] *Ambrose v. Suque-Ambrose*, G.R. No. 206761, June 23, 2021 [Per J. Gaerlan, First Division].
[25] *Guerrero v. Commission on Elections*, 391 Phil. 344, 353 (2000) [Per J. Quisumbing, *En Banc*].

provided under CSC Memorandum Circular No. 38, series of 1993. Macalino also asserts that pursuant to CSC Resolution No. 93-1881 dated May 25, 1993, a contract for consultancy services is not covered by the Civil Service Law and its rules and regulations. He argues that as a Legal Officer II under contract, he considers himself as a consultant for the Municipality of Mexico, Pampanga. Furthermore, CSC Memorandum Circular No. 38, series of 1993, shows that the relationship defined by the contract he entered into with the municipality falls within the purview of a contract of service or job order. He also maintains that there exists no employer-employee relationship between the municipality and him. Thus, his engagement as a consultant is not covered by the one-year ban.

The Court is unconvinced.

In *Dr. Posadas v. Sandiganbayan*,[26] the Court explained the nature of appointment under CSC Resolution No. 93-1881 dated May 25, 1993 and CSC Memorandum Circular No. 38, Series of 1993:

> Pursuant to CSC Resolution No. 93-1881 dated May 25, 1993, a contract for consultancy services is not covered by Civil Service Law, rules and regulations because the said position is not found in the index of position titles approved by DBM. Accordingly, it does not need the approval of the CSC. CSC MC No. 38, series of 1993 expressly provides that consultancy services are not considered government service for *retirement purposes*. A "consultant" is defined as one who provides professional advice on matters within the field of his special knowledge or training. There is no employer-employee relationship in the engagement of a consultant but that of client-professional relationship.[27]

Meanwhile, CSC Resolution No. 020790 re: "Policy Guidelines for Contract of Services," dated June 5, 2002, prohibits personnel from being hired to a vacant regular *plantilla* position under a contract of service and job order.[28]

Here, a closer look at Macalino's Contract of Service shows that his functions as contractual "Legal Officer II" as stated in his contract[29] are very

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[26] 714 Phil. 248 (2013) [Per J. Villarama, First Division].

[27] *Id.* at 285.

[28] SECTION 4. *Prohibitions.*— The following are prohibited from being hired under a contract of services and job order:

a. Those who have been previously dismissed from the service due to commission of an administrative offense;
b. Those who are covered under the rules on nepotism;
c. *Those who are being hired to perform functions pertaining to vacant regular plantilla positions.*
d. Those who have reached the compulsory retirement age except as to consultancy services. (Emphasis supplied)

[29] *Rollo*, p. 40. The Contract of Service states:

. . . .

6. That as a Legal Officer II, the Second Party [Macalino] is expected to perform the following: (Specific duties or functions that make up the service)

much similar to those stated in Title V, Article XI, Section 481, Local Government Code, which defines the qualifications, terms, powers, and duties of a regular *plantilla* Legal Officer of a local government unit.[30]

20% 1.) Formulates measures for the Sanggunian and provides legal assistance and support to the Mayor delivering basic services and provisions of adequate facilities as provided for under Section 17 of the Local Government Code of 1991;
20% 2.) Develops plans and strategies for the legal services related programs and projects approved by the Mayor for implementation and which the Sanggunian is empowered to provide for under the same code;
20% 3.) Performs other related legal services as directed by the Mayor and Sanggunian;
20% 4.) Stands for the protection of humans rights as well as persecuting violations in times of disaster and calamities; and
20% 5.) Exercises such other powers and performs such other duties and functions as may be prescribed by laws and ordinances.

[30] Which reads:
SECTION 481. *Qualifications, Terms, Powers and Duties.* —
(a) No person shall be appointed legal officer unless he is a citizen of the Philippines, a resident of the local government concerned, of good moral character, and a member of the Philippine Bar. He must have practiced his profession for at least five (5) years in the case of the provincial and city legal officer, and three (3) years in the case of the municipal legal officer.
The term of the legal officer shall be coterminous with that of his appointing authority.
The appointment of legal officer shall be mandatory for the provincial and city governments and optional for the municipal government.
(b) The legal officer, the chief legal counsel of the local government unit, shall take charge of the office of legal services and shall:
(1) Formulate measures for the consideration of the sanggunian and provide legal assistance and support to the governor or mayor, as the case may be, in carrying out the delivery of basic services and provisions of adequate facilities as provided for under Section 17 of this Code;
(2) Develop plans and strategies and upon approval thereof by the governor or mayor, as the case may be, implement the same, particularly those which have to do with programs and projects related to legal services which the governor or mayor is empowered to implement and which the sanggunian is empowered to provide for under this Code;
(3) In addition to the foregoing duties and functions, the legal officer shall:
(i) Represent the local government unit in all civil actions and special proceedings wherein the local government unit or any official thereof, in his official capacity, is a party: *Provided*, That, in actions or proceedings where a component city or municipality is a party adverse to the provincial government or to another component city or municipality, a special legal officer may be employed to represent the adverse party;
(ii) When required by the governor, mayor or sanggunian, draft ordinances, contracts, bonds, leases and other instruments, involving any interest of the local government unit and provide comments and recommendations on any instrument already drawn;
(iii) Render his opinion in writing on any question of law when requested to do so by the governor, mayor or sanggunian;
(iv) Investigate or cause to be investigated any local official or employee for administrative neglect or misconduct in office, and recommend appropriate action to the governor, mayor or sanggunian, as the case may be;
(v) Investigate or cause to be investigated any person, firm or corporation holding any franchise or exercising any public privilege for failure to comply with any term or condition in the grant of such franchise or privilege, and recommend appropriate action to the governor, mayor or sanggunian, as the case may be;
(vi) When directed by the governor, mayor, or sanggunian, initiate and prosecute, in the interest of the local government unit concerned, any civil action on any bond, lease or other contract upon any breach or violation thereof; and
(vii) Review and submit recommendations on ordinances approved and execute orders issued by component units;
(4) Recommend measures to the sanggunian and advise the governor or mayor, as the case may be, on all other matters related to upholding the rule of law;
(5) Be in the frontline of protecting human rights and prosecuting any violations thereof, particularly those which occur during and in the aftermath of man-made or natural disasters or calamities; and
(6) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.

Also, as observed by the COA, the certification in the Contract of Service provided that "the specific duties to be performed by the hiree (Raul F. Macalino) specified in his Contract of Service are those pertaining to the vacant regular *plantilla* position."[31] Thus, based on the foregoing, the hiring of Macalino would also be in violation of CSC Resolution No. 020790.

Further, Macalino's argument that he is merely acting as a consultant fails to convince, as it is contradicted by the explicit terms and responsibilities stipulated in the Contract of Service. The terms thereof clearly indicate that Macalino's role extends beyond that of a consultant. As stated in the Contract of Service, Macalino is entrusted with various responsibilities, including the formulation of measures for the *Sanggunian*, the development of plans for legal services-related programs, and the performance of related legal services as directed by the Mayor or the *Sanggunian*. Evidently, these duties go beyond the scope of a consultant, as they involve active participation and involvement in the formulation and implementation of policies and programs.[32]

Even assuming that Macalino may be engaged as a legal consultant, his appointment is nonetheless invalid as he failed to show compliance with COA Circular No. 98-002 dated June 9, 1998, which is addressed to the Local Chief Executives, among others, prohibiting the employment by local government units of private lawyers to handle their legal cases. Thus:

> Accordingly and pursuant to this Commission's exclusive authority to promulgate accounting and auditing rules and regulations, including for the prevention and disallowance of irregular, unnecessary, excessive, extravagant and/or unconscionable expenditure or uses of public funds and property (Sec. 2-2, Art. IX-D, (Constitution), public funds shall not be utilized for payment of the services of a private legal counsel or law firm to represent government agencies and instrumentalities, including government-owned or controlled corporations and local government units in court or to render legal services for them. In the event that such legal services cannot be avoided or is justified under extraordinary or exceptional circumstances for government agencies and instrumentalities, including government-owned or controlled corporations, the *written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be, and the written concurrence of the Commission on Audit shall first be secured before the hiring or employment of a private lawyer or law firm. With respect to local government units, only in those instances provided in par. 3(1), Section 481 of R.A. 7160, which states, thus:*
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> > *"[P]rovided, That, in actions or proceedings where a component city or municipality is a party adverse to the provincial government or to another component city or municipality, a special legal officer may be employed to represent the adverse party;"*
>
> *may public funds be utilized as payment for the services of a private legal counsel or law firm.* (Emphasis supplied)

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[31] *Rollo*, p. 26.
[32] *Id.*

As can be gleaned from the circular, only in instances provided in Section 481(b), paragraph 3(1), Local Government Code, may local government units use public funds to pay for the services of a private lawyer or a law firm.[33] It can also be gathered from the circular that in the event that such legal services cannot be avoided or are warranted under exceptional circumstances, the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be, and the written concurrence of the COA must first be secured before the hiring of a private counsel or law firm.

There is nothing in the records showing that the aforementioned requirements were complied with. Moreover, it bears noting that the responsibilities outlined in the Contract of Service of Macalino extend beyond the scope of what is provided in Section 481(b), paragraph 3(1), Local Government Code. The duties and obligations in the said contract encompass additional instances and functions that are not explicitly covered by COA Circular No. 98-002.

Having settled the propriety of the disallowance, the Court now delves into the issue of civil liability for the return of the disallowed amount.

It is discerned that the disputed salaries and PERA were given to Macalino as remuneration under a Contract of Service and not under a regular *plantilla* position. As such, the applicable jurisprudence is the case of *Torreta v. Commission on Audit*,[34] where the Court adopted special guidelines on the return of disallowed amounts in cases involving *unlawful/irregular government contracts*, *viz.*:

> Accordingly, we hereby adopt the proposed guidelines on return of disallowed amounts in cases involving unlawful/irregular government contracts submitted by herein Justice Perlas-Bernabe, to wit:
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> 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:
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> a. Approving and certifying officers who acted in good faith, in the 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.
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> b. Pursuant to Section 43 of the Administrative Code of 1987, approving and certifying officers who are clearly shown to have acted

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[33] *Domato-Togonon v. Commission on Audit*, G.R. No. 224516, July 6, 2021 [Per J. Leonen, *En Banc*].
[34] G.R. No. 242925, November 10, 2020 [Per J. Gaerlan, *En Banc*].

> with bad faith, malice, or gross negligence, are solidarily liable together with the recipients for the return of the disallowed amount.
>
> c. The civil liability for the disallowed amount may be reduced by the amounts due to the recipient based on the application of the principle of *quantum meruit* on a case to case basis.
>
> d. These rules are without prejudice to the application of the more specific provisions of law, COA rules and regulations, and accounting principles depending on the nature of the government contract involved. (Citation omitted)

Approving or certifying officers who authorized or took part in the authorization of an unlawful or irregular government contract are not automatically held liable for the return of disallowed amounts paid under such contract. Consistent with Executive Order No. 292, Book I, Chapter 9, Section 38(1),[35] otherwise known as the "*Administrative Code*," a clear showing of bad faith, malice, or gross negligence must first be established in order to hold them civilly liable. Otherwise, the presumption of good faith obtains, which, if not overcome, negates any civil liability on their part (Rule 2a, *Torreta* Rules). However, once the existence of bad faith, malice, or gross negligence is clearly established, the liability of approving or certifying officers for illegal expenditures is solidary together with the recipients with respect to the disallowed amounts. This is pursuant to Administrative Code, Book VI, Chapter 5, Section 43[36] (Rule 2b, *Torreta* Rules).

Notably, as cemented in *Torreta,* such solidary liability "*may be* ***reduced*** *by the amounts due to the recipient based on the application of the principle of quantum meruit on a case to case basis*" (Rule 2c, *Torreta* Rules). As a doctrine grounded on considerations of fairness and the equitable principle of unjust enrichment, recipients of amounts paid under unlawful or irregular government contracts may still be allowed to recover a "reasonable value of the thing ... delivered or the service ... rendered"[37] when proper and depending on the circumstances of each case. In turn, such recovery would also inure to the benefit of the erring approving and certifying officers whose civil liability would also be equitably reduced. Conversely, only the disallowed amount in excess of the reasonable value of the thing delivered or service rendered would have to be returned by payees solidarily with the erring public officers. This means that, when the *quantum meruit* principle applies, the civil liability for the disallowed amount is reduced or even excused, as the case may be. As explained in *Torreta*:

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[35] Sec. 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.

[36] Sec. 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.* (Emphasis supplied)

[37] *Torreta v. Commission on Audit*, 889 Phil. 1119, 1159 (2020) [Per J. Gaerlan, *En Banc*].

> Verily, the peculiarity of cases involving government contracts for procurement of goods or services necessitates the promulgation of a separate guidelines for the return of the disallowed amounts. In these cases, it is deemed fit that the passive recipients be ordered to return what they received subject to the application of the principle of *quantum meruit*. *Quantum meruit* literally means "as much as he deserves." Under this principle, a person may recover a reasonable value of the thing he delivered or the service he rendered. The principle also acts as a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it. The principle of *quantum meruit* is predicated on equity. In the case of *Geronimo v. COA*, it has been held that "the [r]ecovery on the basis of *quantum meruit* was allowed despite the invalidity or absence of a written contract between the contractor and the government agency." In *Dr. Eslao v. COA*, the Court explained that the denial of the contractor's claim would result in the government unjustly enriching itself. The Court further reasoned that justice and equity demand compensation on the basis of *quantum meruit*. Thus, in applying this principle, the amount in which the petitioners together with the other liable individuals shall be equitably reduced.[38] (Citations omitted)

In this case, records reveal that Macalino was held civilly liable along with the approving and certifying officers of the Municipal Government of Mexico, Pampanga, namely: Leonila S. Ignacio, Alice A. Reyes, Perlita T. Lagman, Emmanuel R. Manalo, Roy D. Manalastas, Maritess B. Miranda (Miranda), and Avelina P. Reyes.[39] On appeal, Miranda, as the disbursing officer, was excluded by the COA Proper from liability.[40] As records do not show that the erring approving and certifying officers appealed the COA's findings, the Court will not anymore touch upon the merits of their respective culpabilities.

Applying the *Torreta* guidelines, Macalino should be held solidarily liable with the erring approving and certifying officers, with the exception of Miranda, for the return of the full disallowed amount of PHP 149,015.00.

The dissenting opinion, citing *Torreta*, posits that the principle of *quantum meruit* should be applied to equitably reduce the civil liability of Macalino and that the case should be remanded to the COA for such determination.[41]

However, it is noteworthy to highlight that unlike in previous cases where the *quantum meruit* principle was applied in irregular government contracts involving the engagement of lawyers,[42] the instant case presents a

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38 *Id.* at 1149.
39 *Rollo*, p. 43.
40 *Id.* at 27–28.
41 J. Leonen, Concurring and Dissenting Opinion, pp. 9–10.
42 *See Ricalde v. Commission on Audit*, G.R. No. 253724, February 15, 2022 [Per J. M.V. Lopez, *En Banc*]; *Alejandrino v. Commission on Audit*, 866 Phil. 188 (2019) [Per J. Carandang, *En Banc*]; *The Law Firm of Laguesma Magsalin Consulta and Gastardo v. Commission on Audit*, 750 Phil. 258 (2015) [Per J. Leonen, *En Banc*].

different situation. What is involved here is not a difficult question of law. The facts of the case indicate a blatant circumvention of a basic constitutional prohibition which any lawyer should know. Macalino's contention that he cannot be faulted for the said appointment since he entered into the Contract of Service in good faith does not inspire belief. He cannot claim ignorance of the constitutional provision which prohibits losing candidates to be appointed to any government office within 1 year after an election by reason of the undeniable fact that he is a member of the bar and is presumed to know the law. It is apparent that the contracting parties were skirting the constitutional prohibition by entering into a contractual engagement in lieu of a government appointment. To allow Macalino to recover under a constitutionally-infirm contract would effectively sanction a breach of our fundamental law which cannot be allowed.

In *Frenzel v. Catito*[43] and *Beumer v. Amores*,[44] which both involved a foreigner seeking reimbursement for money spent on purchase of lands in the Philippines, the Court ruled that the principle of unjust enrichment does not apply if the action is proscribed by the Constitution. "Equity as a rule will follow the law and will not permit that to be done indirectly which, because of public policy, cannot be done directly."[45] Thus, it was held that since the contract in dispute contravened the constitutional prohibition against the foreign ownership of Philippine lands, not only is the foreigner barred from reconveyance of the property, he also cannot recover the money spent to acquire the same, *viz.*:

> Even if, as claimed by the petitioner, the sales in question were entered into by him as the real vendee, the said transactions are in violation of the Constitution; hence, are null and *void ab initio*. A contract that violates the Constitution and the law, is null and void and vests no rights and creates no obligations. It produces no legal effect at all. The petitioner, being a party to an illegal contract, cannot come into a court of law and ask to have his illegal objective carried out. One who loses his money or property by knowingly engaging in a contract or transaction which involves his own moral turpitude may not maintain an action for his losses. To him who moves in deliberation and premeditation, the law is unyielding. The law will not aid either party to an illegal contract or agreement; it leaves the parties where it finds them. Under Article 1412 of the New Civil Code, the petitioner cannot have the subject properties deeded to him or allow him to recover the money he had spent for the purchase thereof. Equity as a rule will follow the law and will not permit that to be done indirectly which, because of public policy, cannot be done directly.[46]

At this juncture, the Court finds it fitting to clarify that the adoption of the *quantum meruit* principle in *Torreta* was never intended to sanction *manifest or palpable violations of law*, especially those under the Constitution or those which involve clear public policy. Indeed, case law bears that the

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[43] 453 Phil. 885 (2003) [Per J. Callejo, Sr., Second Division].
[44] 700 Phil. 90 (2012) [Per J. Perlas-Bernabe, Second Division].
[45] *Frenzel v. Catito*, 453 Phil. 885, 905 (2003) [Per J. Callejo, Sr., Second Division].
[46] *Id.* at 904–905.

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principle of *quantum meruit* operates as an equitable device to prevent the government's unjust enrichment at the expense of innocent parties, who will otherwise suffer monetary loss with the rigid application of technical rules or insignificant legal requirements.[47] The rule was developed in order to serve the cause of substantial justice based on the peculiar circumstances of each case and not to aid the iniquitous. "The time-honored principle is that he who seeks equity must do equity, and he who comes into equity must come with clean hands. Conversely stated, he who has done inequity shall not be accorded equity. Thus, *a litigant may be denied relief by a court of equity on the ground that his conduct has been inequitable, unfair and dishonest, or fraudulent, or deceitful*,"[48] as in this case.

In fine, the instant petition should be dismissed for failure to show that the Commission on Audit committed grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the assailed rulings.

ACCORDINGLY, the Petition for Review on *Certiorari* is **DISMISSED**. Consequently, the Decision No. 2019-305 dated August 9, 2019 and Resolution dated January 21, 2020 of the Commission on Audit Proper, affirming the Notice of Disallowance (ND) No. 14-001-100-(13) dated March 28, 2014 issued by the Office of the Auditor Team Leader, Commission on Audit, Mexico, Pampanga, which disallowed the payment of wages and PERA received by petitioner Atty. Raul F. Macalino, is **AFFIRMED**. Atty. Raul F. Macalino is held solidarily liable with the approving and certifying officers, excluding Maritess B. Miranda, for the return of the disallowed amount of PHP 149,015.00.

SO ORDERED.

JOSE MIDAS P. MARQUEZ
Associate Justice

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[47] *See Sto. Niño Construction v. Commission on Audit*, 865 Phil. 695 (2019) [Per J. Carandang, *En Banc*]; *Department of Public Works and Highways v. Quiwa*, 681 Phil. 485 (2012) [Per J. Sereno, Special Second Division]; *Vigilar v. Aquino*, 654 Phil. 755 (2011) [Per J. Sereno, *En Banc*]; *DOH v. C.V. Canchela & Associates, Architects (CVCAA)*, 511 Phil. 654 (2005) [Per J. Carpio-Morales, Third Division]; *Melchor v. Commission on Audit*, 277 Phil. 801 (1991) [Per J. Gutierrez, Jr., *En Banc*]; *Eslao v. The Commission on Audit*, 273 Phil. 97 (1991) [Per J. Gancayco, *En Banc*].

[48] *Beumer v. Amores*, 700 Phil. 90, 98 (2012) [Per J. Perlas-Bernabe, Second Division]. (Emphasis supplied)

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

MARVIC M.V.F. LEONEN
Senior Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

(On official leave)
HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
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

ANTONIO T. KHO, JR.
Associate Justice

(On official business)
MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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