Republic of the Philippines
Supreme Court
Manila

EN BANC

ZAMBOANGA CITY WATER DISTRICT, represented by its General Manager, Leonardo Rey D. Vasquez, ZAMBOANGA CITY WATER DISTRICT-EMPLOYEES UNION, represented by its President, Noel A. Fabian, LOPE IRINGAN, ALEJO S. ROJAS, JR., EDWIN N. MAKASIAR, RODOLFO CARTAGENA, ROBERTO R. MENDOZA, GREGORIO R. MOLINA, ARNULFO A. ALFONSO, LUCENA R. BUSCAS, LUIS A. WEE, LEILA M. MONTEJO, FELECITA G. REBOLLOS, ERIC A. DELGADO, NORMA L. VILLAFRANCA, ABNER C. PADUA, SATURNINO M. ALVIAR, FELIPE S. SALCEDO, JULIUS P. CARPITANOS, HANLEY ALBAÑA, JOHNY D. DEMAYO, ARCHILES A. BRAULIO, ELIZA MAY R. BRAULIO, TEDILITO R. SARMIENTO, SUSANA C. BONGHANOY, LUZ A. BIADO, ERIC V. SALARITAN, RYAN ED C. ESTRADA, NOEL MASA KAWAGUCHI, TEOTIMO REYES, JR., EUGENE DOMINGO, and ALEX ACOSTA, represented by LUIS A. WEE,

Petitioners,

- versus -

COMMISSION ON AUDIT,

Respondent.

G.R. No. 213472

Present:

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

Promulgated:

January 26, 2016

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DECISION

MENDOZA, *J.*:

This is a petition for *certiorari*[1] under Rule 64 of the Revised Rules of Court seeking to reverse and set aside the October 28, 2010 Decision[2] and the June 6, 2014 Resolution [3] of the Commission on Audit *(COA)* which affirmed the October 14, 2008 Decision[4] of the Legal and Adjudication Sector, Legal and Adjudication Office-Corporate *(LAO)*.

Petitioner Zamboanga City Water District *(ZCWD)* is a government-owned and/and controlled corporation *(GOCC)* which was created pursuant to the provisions of Presidential Decree (P.D.) No. 198 or the Provincial Water Utilities Act of 1973 *(PWUA)*, as amended by Republic Act *(R.A.)* No. 9286.[5]

On January 9, 2007, Catalino S. Genel, Audit Team Leader for ZCWD, Zamboanga City, issued the following Notices of Disallowance (ND) for ZCWD's various payments:[6]

ND No.	Particulars	Amount
2006-001 (2005)	Claim for salary increase of GM Juanita L. Bucoy lacks the Department of Budget and Management *(DBM)* guideline and is over and above the DBM approved rate per audited plantilla.	₱523,760.00
2006-002(2005)	Claim of Representation Allowance and Transportation Allowance *(RATA)* is not in accordance with DBM-approved rates pursuant to the General Appropriations Act *(GAA)*, Republic Act (R.A.) Nos. 8760 and 9206 and DBM Circulars	₱88,911.60
2006-003(2005)	Computation of monetization of leave credits is without legal basis being based on the new rate instead of the standardized rate under the DBM audited plantilla	₱21,910.28
2006-004(2005)	Payment of back Cost of Living Allowance *(COLA)* and Amelioration Allowance *(AA)* is in violation of Section 12, R.A. No. 6758, and DBM Budget Circular Nos. 2001-02 and 2005-02, dated November 12, 2001 and October 24, 2005, respectively	₱15,435,121.92

[1] *Rollo*, pp. 3-50.
[2] Concurred in by Chairman Reynaldo A. Villar, Commissioner Juanito G. Espino Jr. and Commissioner Evelyn R. San Buenaventura; *rollo*, pp.75-95.
[3] Id. at 97-100.
[4] Penned by Director Janet D. Nacion; id. at 101-113.
[5] Id. at 5-6.
[6] Id. at 75-77.

2006-005(2005)	Payment of one month Mid-year incentive has no legal basis pursuant to R.A. No. 6886, as amended by R.A. No. 8441. The Civil Service Commission *(CSC)* has no jurisdiction to determine the rates of government personnel, for the same is vested with the DBM. Further, the said benefit is not among those contemplated in Sections 5 to 7 of the Implementing Rules and Regulations *(IRR)* of Rule X, Book V, Executive Order (E.O.) No. 292, which is the basis of the CSC in adopting the Program on Awards and Incentives for Service Excellence *(PRAISE)*	₱3,915,068.00
2006-006(2005)	Payment of 14th month pay has no legal basis pursuant to R.A. No. 6886, as amended. The CSC has no jurisdiction to determine the rates of government personnel, for the same is vested with the DBM. Further, the said benefit is not among those contemplated in Sections 5 to 7 of the IRR of Rule X, Book V, E.O. No. 292, which is the basis of the CSC in adopting the PRAISE	₱3,964,770.00
2006-007(2005)	The grant of Collective Negotiation Agreement *(CNA)* incentive does not conform with the provisions of Public Sector Labor Management Council *(PSLMC)* Resolution No. 2, series of 2003. The grant of CNA incentives does not show any proof of cost cutting measures adopted by management and the union, and the savings generated as the sole source of the incentives as required under the said resolution. The amount of incentive should not be predetermined and should be given only at year end	₱1,680,000.00
2006-008(2005) to 2006-012(2005)	Payment of *per diem* of the members of the Board of Directors *(BOD)* is in excess of what is allowed under Section 3, (c-III), Administrative Order (A.O.) No. 103, dated August 31, 2004	₱301,440.00 (Total – 1,507, 200.00)
2006-013(2005)	Excess payment of Representation Allowance *(RA)* in violation of DBM Budget Circular Nos. 18 and 498, dated November 18, 2000 and April 11, 2005, respectively. Claims of RATA based on 40% basic pay under Letter of Implementation (LOImp) No. 97 shall no longer be valid and payment thereof shall not be allowed pursuant to Section 40, R.A. No. 9206, dated August 12, 2003.	₱22,014.60
2006-14(2005)	Availment of a separate life insurance program other than that of the Government Service Insurance System *(GSIS)* is contrary to the principle of prudent spending of government funds	₱134,865.00

The NDs covered the disbursements made during the tenure of then General Manager Juanita L. Bucoy *(GM Bucoy)*.[7] On April 12, 2007, ZCWD filed its omnibus appeal before the LAO.[8]

[7] Id. at 9.
[8] Id. at 104.

The LAO Ruling

On October 14, 2008, the LAO rendered a decision upholding all the NDs in the aggregate amount of ₱27,293,621.40.

First, the LAO disagreed with the contention of the ZCWD that its Board of Directors *(BOD)* had the right to fix the compensation of its GM pursuant to R.A. No. 9286.[9] It stated that the compensation of the GMs of Local Water Districts *(LWDs)* was still subject to the provisions of R.A. No. 6758 or the Salary Standardization Law *(SSL)*. Further, it emphasized that any salary increase of government employees must be authorized through a legislative enactment or pronouncement from the President, through the DBM.

Second, the LAO opined that the payment of the Representation Allowance and Transportation Allowance *(RATA)* of the GM and the Representation Allowance *(RA)* of the Assistant GMs and the back payment of the Cost of Living Allowance *(COLA)* and the Amelioration Allowance *(AA)* were correctly disallowed because LWDs were not covered by Letter of Implementation *(LOI)* No. 97. Further, even if LWDs were covered by LOI No. 97, the payment of RATA and RA should still be disallowed because they were receiving the RATA at the rate of 20% of their basic salary, and not the rate provided for by LOI No. 97.

Third, the LAO also insisted that the payments corresponding to the midyear incentive and the Collective Negotiation Agreement *(CNA)* incentives were improper because they were without basis. It opined that ZCWD could not rely on the CSC approval[10] of its Program on Awards and Incentives for Service Excellence *(PRAISE)* because it had no authority to do so. Likewise, it noted that ZCWD failed to establish compliance with Public Sector Labor Management Council *(PSLMC)* Resolution No. 2 to warrant the payment of CNA incentives. Moreover, the LAO pointed out that the payment of life insurance benefits other than that provided by the GSIS was contrary to Section 28(b) of Commonwealth Act (C.A.) No. 186,[11] as amended by R.A. No.4968.

Lastly, the LAO found that the *per diems* paid to the BOD, as well as the 14th month pay given to ZCWD employees, were in excess of the amount allowed by law. The LOA stated that the *per diems* granted to the members of the BOD were in excess of the amount allowed by Administrative Order

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[9] An act further amending Presidential Decree (P.D.) No. 198 or the "Local Water Utilities Act of 1973."
[10] *Rollo*, p. 140.
[11] Government Service Insurance Act.

(A.O.) No. 103 and the 14th month pay was in excess of the amount authorized under R.A. No. 8441.

Undaunted, ZCWD appealed before the COA.

The COA Ruling

On October 28, 2010, the COA rendered the assailed decision affirming the LAO ruling. The dispositive portion of which reads:

> **WHEREFORE,** in view of the foregoing, the herein appeal is hereby **DENIED** and ND Nos. 2006-001(2005) to 2006-014(2005), in the total amount of ₱27,293,621.40 are hereby **AFFIRMED.**[12]

In the said decision, the COA highlighted that the CNA incentives should not be paid because ZCWD failed to prove compliance with PSLMC Resolution No. 2, particularly: (a) identifying specific cost-cutting measures; and (b) proof that the funds for the incentives were taken from savings as a result of the cost-saving measures.

Aggrieved, ZCWD moved for reconsideration but its motion was denied by the COA in its assailed resolution, dated June 6, 2014.

Hence, this present petition, raising the following

GROUNDS

A. IN AFFIRMING NOTICE OF DISALLOWANCE (ND) NOS. 2006-001(2005) TO 2006-03(2005), ALL DATED 09 JANUARY 2007 CONCERNING THE SALARIES AND BENEFITS OF THE FORMER GENERAL MANAGER OF PETITIONER ZCWD, BY HOLDING THAT ITS BOARD OF DIRECTORS DID NOT HAVE THE POWER TO FIX THE GENERAL MANAGER'S SALARY AND BENEFITS DESPITE THE CLEAR MANDATE OF SECTION 23 OF P.D. NO. 198, AS AMENDED BY R.A. NO. 9286;

B. IN AFFIRMING NOTICE OF DISALLOWANCE (ND) NO. 2006-004(2005) DATED 09 JANUARY 2007 CONCERNING THE BACK PAYMENT OF COST OF LIVING ALLOWANCE (COLA) AND AMELIORATION ALLOWANCE DIFFERENTIALS, BY HOLDING THAT THE EMPLOYEES OF PETITIONER ZCWD ARE NOT ENTITLED TO THE COLA AND AMELIORATION ALLOWANCE SINCE THEY ARE NOT COVERED BY LOI NO. 97 DATED 01 MAY 1979, AND THAT FROM THE PERIOD OF 01

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[12] *Rollo*, p. 95.

JULY 1989 TO 16 MARCH 1999, PETITIONER'S EMPLOYEES WERE ALREADY PAID THEIR COLA AND AMELIORATION ALLOWANCE;

C. IN AFFIRMING NOTICE OF DISALLOWANCE (ND) NO. 2006-006(2005) DATED 09 JANUARY 2007 CONCERNING THE PAYMENT OF 14TH-MONTH PAY BY HOLDING THAT PETITTIONERS ZCWD EMPLOYEES HAVE NOT BEEN PAID THE 14TH MONTH PAY PRIOR TO 01 JULY 1989 DESPITE EVIDENCE TO THE CONTRARY, AND ASSUMING THAT THE PAYMENT WAS FOR THE USUAL BONUS REGULARLY RECEIVED BY EMPLOYEES UNDER M.O. NO. 324 DATED 05 OCTOBER 1990;

D. IN AFFIRMING NOTICE OF DISALLOWANCE (ND) NO. 2006-007(2005) DATED 09 JANUARY 2007 COVERING PAYMENTS OF THE CAN INCENTIVE BENEFITS, BY HOLDING THAT PETITTIONER ZCWD DID NOT COMPLY WITH THE REQUIREMENTS OF PSLMC RESOLUTION NO. 2, SERIES OF 2003 DESPITE CLEAR EVIDENCE OF COMPLIANCE WITH THE SAME;

E. IN AFFIRMING NOTICE OF DISALLOWANCE (ND) NOS. 2006-008(2005) TO 2006-012(2005), ALL DATED 09 JANUARY 2007 COVERING PAYMENTS OF THE PER DIEMS OF THE MEMBERS OF THE BOARD OF DIRECTORS OF PETITIONER ZCWD, BY HOLDING THAT THE LWUA DOES NOT HAVE THE AUTHORITY TO FIX THE PER DIEMS OF THE BOARD OF DIRECTORS DESPITE ITS CLEAR MANDATE UNDER P.D. NO. 198 AS AMENDED BY R.A. NO. 9268.

Essentially, the Court is tasked to resolve (1) Whether or not the disbursements under the NDs were improper; and (2) in the event the disbursements were improper, whether or not petitioner is liable to refund the same.

Petitioner ZCWD insists that its BOD has the power to determine and fix the salaries and compensation of its GM, in accordance with Section 23 of P.D. No. 198, as amended. It contends that its employees were entitled to COLA and AA pursuant to the ruling of the Court in *PPA Employees hired after July 1, 1989 v. COA (PPA Employees),*[13] which stated that the government employees were entitled to the said allowances as the integration of benefits took place only on March 16, 1999 when Department of Budget and Management *(DBM)* Corporate Compensation Circular *(CCC)* No. 10 took effect.

[13] 506 Phil. 382 (2005).

Moreover, ZCWD claims that the payment of the CNA incentives was in accordance with the requirements of PSLMC Resolution No. 2. It pointed out that its employees had always been paid the 14th month pay since July 1, 1989 and that disallowing the payment of the 14th month pay to employees hired after July 1, 1989 would violate the equal protection clause.

Furthermore, ZCWD argues that the payment of the *per diems* to its BOD was in order because, prior to the passage of A.O. No. 103, its BOD had a fixed right to the new rate of *per diems.*

In its Comment,[14] dated November 21, 2014, the COA reiterated its reasons for upholding the disallowance of ZCWD's various payments.

In its Reply,[15] dated February 17, 2015, ZCWD insisted that its BOD was vested with the authority to fix the compensation of its GM, pursuant to R.A. No. 9286. Further, it argued that ZCWD employees were entitled to the back payment of COLA and AA as LWDs were covered by LOI No. 97. ZCWD also stated that it could not be faulted for relying on R.A. No. 9286 and Local Water Utilities Administration *(LWUA)* Board Resolution No. 120 in paying the *per diems* of its BOD without any advice from the LWUA as the same were subservient to A.O. No. 103. ZCWD also prayed that, in the event that the disallowances were upheld, it need not be made to reimburse the payment because they were done in good faith.

The Court's Ruling

Limited power of the BOD to fix the salary of the GM

ZCWD's contention that, pursuant to Section 23 of P.D. No. 198, as amended by R.A. No. 9286, the BOD has the discretion to fix the compensation of the GM is misplaced. As held in *Mendoza v. COA*[16] *(Mendoza)*, unless specifically exempted by its charter, GOCCs are covered by the provisions of the SSL. The Court in *Mendoza* recognized the power of the BOD to fix the compensation of the GM but limited the same to the extent that the rates approved must be in accordance with the position classification system under the SSL. Here in this case, the salary increase of GM Bucoy, including the corresponding increase in her monetized leave credits, was properly disallowed for being in excess of the amounts allowed under the SSL.

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[14] *Rollo,* pp. 296-318.
[15] Id. at 325-346.
[16] G.R. No. 195395, September 10, 2013, 705 SCRA 306.

Payment of RATA and RA based on the rates under LOI No. 97 is improper

The Court agrees with ZCWD that LWDs are within the coverage of LOI No. 97. Nevertheless, the payment of RATA and RA in favor of the GM and Assistant GMs of ZCWD based on the rates under LOI No. 97 is inappropriate. In *Ambros v. COA (Ambros)*,[17] the Court stated that non-integrated benefits, such as the RATA, are allowed to be continued only for (1) for incumbents of positions as of July 1, 1989; and (2) those who were actually receiving the said allowances as of the said date, in consonance with Section 12[18] of the SSL.

In the case at bench, GM Bucoy and the assistant GMs of ZCWD, although incumbent as of July 1, 1989, were not receiving RATA, a non-integrated benefit, based on the rates provided in LOI No. 97. Consequently, they are no longer entitled to enjoy the RATA benefit given by LOI No. 97. In *Philippine Ports Authority v. COA (PPA),*[19] the Court explained:

> Now, under the second sentence of Section 12, first paragraph, the RATA enjoyed by these PPA officials shall continue to be authorized only if they are "being received by incumbents only as of July 1, 1989." RA 6758 has therefore, to this extent, *amended* LOI No. 97. By limiting the benefit of the RATA granted by LOI No. 97 to *incumbents*, Congress has manifested its intent to gradually phase out this RATA privilege under LOI No. 97 without upsetting its policy of non-diminution of pay.
>
> xxxx
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> We have earlier classified the petitioners officials into two. The first category is composed of those who, pursuant to LOI No. 97 and Memorandum Circular No. 57-87 dated October 1, 1987, were granted and were receiving RATA equivalent to 40% salary prior to July 1, 1989, the effectivity of RA 6758. **The second category consists of those who as of July 1, 1989 were not receiving the RATA privilege under LOI No. 97.** These officials were given RATA after July 1, 1989, pursuant to Memorandum Circular No. 36-89 dated October 23, 1989. Said circular, however, provided for a retroactive grant of RATA from June 1, 1989. Under Memorandum Circular

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[17] 501 Phil. 255 (2005).

[18] All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be included in the standardized salary rates herein prescribed. **Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989, not integrated into the standardized salary rates shall continue to be authorized.** (Emphasis supplied)

[19] G.R. No. 100773, October 16, 1992, 214 SCRA 653.

> No. 46-90 dated November 14, 1990, the RATA of this second set of officials was increased from 20% to 40% of standardized salary.
>
> Applying the provisions of Section 12 to the petitioners' case, we rule that only the first category officials are entitled to the continued RATA benefit under LOI No. 97. **The first category officials were incumbents as of July 1, 1989 and more importantly, they were receiving the RATA provided by LOI No. 97 as of July 1, 1989.**
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> While the second category officials were incumbents as of July 1, 1989, they were *not* receiving RATA as of July 1, 1989.
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> True, LOI No. 97 provides that these second category officials may likewise be given RATA not exceeding 40% basic salary, but this provision did not create a vested right in their favor. xxx The grant of RATA under LOI No. 97 to these officials was still discretionary on the part of the PPA management. It was not absolute nor was it unconditional. **Unfortunately, when the PPA management finally authorized the giving of RATA to these second category officials, such was no longer allowed under RA 6758.**[20]
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> [Emphases Supplied]

Similarly, the ZCWD officials were not entitled to the benefit of RATA based on the rates provided in LOI No. 97. They fail to meet the criteria set in *Ambros* because although they were incumbents as of July 1, 1989, they were not receiving their RATA based on the rates under LOI No. 97 on the said date.

ZCWD employees not entitled to back payment of COLA and AA

Pursuant to Section 12 of the SSL, employee benefits, save for some exceptions, are deemed integrated into the salary. In *Maritime Industry Authority v. COA (MIA)*,[21] the Court emphasized that the general rule was that all allowances were deemed included in the standardized salary and the issuance of the DBM was required only if additional non-integrated allowances would be identified. In accordance with the *MIA* ruling, the COLA and AA were already deemed integrated in the standardized salary.

Further, ZCWD cannot rely on the case of *PPA Employees*. As clarified by *MIA*, the *PPA Employees* ruling was only limited to distinguishing the benefits that may be received by government employees who were hired before and after the effectivity of the SSL, to wit:

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[20] Id. at 660-661.
[21] G.R. No. 185812, January 13, 2015.

Petitioner Maritime Industry Authority's reliance on *Philippine Ports Authority Employees Hired After July 1, 1989 v. Commission on Audit* is misplaced. As this court clarified in *Napocor Employees Consolidated Union v. National Power Corporation*, the ruling in *Philippine Ports Authority Employees Hired After July 1, 1989* was limited to distinguishing the benefits that may be received by government employees who were hired before and after the effectivity of Republic Act No. 6758. Thus:

> [t]he Court has, to be sure, taken stock of its recent ruling in *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989 vs. Commission on Audit.* Sadly, however, our pronouncement therein is not on all fours applicable owing to the differing factual milieu. There, the Commission on Audit allowed the payment of back cost of living allowance (COLA) and amelioration allowance previously withheld from PPA employees pursuant to the heretofore ineffective DBM — CCC No. 10, but limited the back payment only to incumbents as of July 1, 1989 who were already then receiving both allowances. COA considered the COLA and amelioration allowance of PPA employees as *"not integrated"* within the purview of the second sentence of Section 12 of Rep. Act No. 6758, which, according to COA confines the payment of "not integrated" benefits only to July 1, 1989 incumbents already enjoying the allowances.

In setting aside COA's ruling, we held in *PPA Employees* that there was no basis to use the elements of incumbency and prior receipt as standards to discriminate against the petitioners therein. For, DBM-CCC No. 10, upon which the incumbency and prior receipt requirements are contextually predicated, was in legal limbo from July 1, 1989 (effective date of the unpublished DBM-CCC No. 10) to March 16, 1999 (date of effectivity of the heretofore unpublished DBM circular). And being in legal limbo, the benefits otherwise covered by the circular, if properly published, were likewise in legal limbo as they cannot be classified either as effectively integrated or not integrated benefits.

Similar to what was stated in *Napocor Employees Consolidated Union*, the "element of discrimination between incumbents as of July 1, 1989 and those joining the force thereafter is not obtaining in this case." The second sentence of the first paragraph of Section 12, Republic Act No. 6758 is not in issue.

In the case at bench, the incumbency of the employees was not contested, rather, the back payment of COLA and AA was not properly justified as payable obligations, which ZCWD paid after its financial conditions improved in 2005. Clearly, the *PPA Employees* case is inapplicable.

Disallowance of CNA Incentives correct

PSLMC Resolution No. 2 provides for the guidelines in connection with the payment of CNA incentives to rank-and-file employees of GOCCs. Section 2 thereof requires that the CNA must include cost-cutting measures that shall be undertaken by both the management and the union.

The COA was correct in finding that ZCWD failed to identify the specific cost-cutting measures undertaken, pursuant to the CNA. The Certification[22] issued by ZCWD merely stated that there was a decrease in expenses but it did not specify the cost-cutting measures resorted to. Moreover, the said certification, as well as the Certification of Savings,[23] did not cover the period in which the CNA incentives were supposedly given, which ran contrary to Section 8[24] of PSLMC Resolution No. 2. ZCWD failed to establish that there were savings in 2005 to justify the payment of CNA incentives during the said year.

ZCWD employees not entitled to 14th month pay

The COA disallowed the 14th month pay on the ground that ZCWD failed to prove that it had granted the same to its employees since July 1, 1989 and even it were true, it could not be extended to employees hired after the said date. ZCWD is adamant that it submitted documentary evidence to support the payment of 14th month pay even before July 1, 1989. It asserts that the documents it presented showed that what was paid to the employees was the "Year-end Christmas Bonus" but it claims that the same was the 14th month pay.

The Court agrees with the COA that the documents presented by ZCWD did not unequivocally show that it had paid its employees the 14th month pay because the "Year-end Christmas Bonus" could have referred to the usual year-end benefit equivalent to one (1) month salary as provided by Memorandum Order No. 324.

Even if ZCWD could prove that it had granted the 14th month pay to its employees, it could not insist that the same should be given to the employees hired after July 1, 1989. The 14th month pay was in the nature of an additional benefit, *a non-integrated benefit*, which had been given on top of an employee's usual salary. As discussed above, in order for a non-

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[22] *Rollo*, p. 162.
[23] Id. at 163.
[24] The CNA incentive may be granted every year that savings are generated the life of the CNA.

integrated benefit to be continuously enjoyed, it must have been given since July 1, 1989 to incumbents as of the said date. It could not be extended to employees hired after July 1, 1989 or to those which had replaced the incumbents as of July 1, 1989.

ZCWD is mistaken in arguing that such treatment violated the equal protection clause enshrined in the Constitution. The equal protection clause allows classification provided that it is based on real and substantial differences having a reasonable relation to the subject of the particular legislation.[25] As explained in *Aquino v. Philippine Ports Authority*,[26] the distinction between employees hired before and after July 1, 1989 was based on reasonable differences which was germane to the objective of the SSL to standardize the salaries of government employees, to wit:

> As explained earlier, the different treatment accorded the second sentence (first paragraph) of Section 12 of RA 6758 to the incumbents as of 1 July 1989, on one hand, and those employees hired on or after the said date, on the other, with respect to the grant of non-integrated benefits lies in the fact that the legislature intended to gradually phase out the said benefits without, however, upsetting its policy of non-diminution of pay and benefits.
>
> The consequential outcome under Sections 12 and 17 is that if the incumbent resigns or is promoted to a higher position, his successor is no longer entitled to his predecessor's RATA privilege or to the transition allowance. After 1 July 1989, the additional financial incentives such as RATA may no longer be given by the GOCCs with the exemption of those which were authorized to be continued under Section 12 of RA 6758.
>
> Therefore, the aforesaid provision does not infringe the equal protection clause of the Constitution as it is based on reasonable classification intended to protect the rights of the incumbents against diminution of their pay and benefits.

Per diems granted to the Board beyond the amount allowed by law

ZCWD asserts that pursuant to R.A. No. 9286, it is the LWUA which is authorized to fix the *per diem* of its BOD and that A.O. No. 103 did not impliedly repeal R.A. No. 9286, hence, the latter remains to be in effect. It insists that it could rely on LWUA Board Resolution No. 120, which approved the *per diem* beyond the rates allowed by A.O. No. 103.

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[25] *Remman Enterprises Inc. v. Professional Regulatory Board of Real Estate Service*, G.R. No. 197676, February 4, 2014, 715 SCRA 293, 316.
[26] G.R. No. 181973, April 17, 2013, 696 SCRA 666.

Although ZCWD is correct in arguing that A.O. No. 103 did not repeal R.A. No. 9286, it is, however, mistaken, that the LWUA resolution is a sufficient basis to justify the grant of *per diem* in the amount beyond what is allowed under A.O. No. 103. Section 3 of A.O. No. 103 instructs all GOCCs to reduce the combined total of *per diems*, honoraria and benefits to a maximum of ₱20,000.00.

The said provision did not divest LWUA of its authority to fix the *per diem* of BODs of LWDs. It, nonetheless, limits the same in order to implement austerity measures, as directed by A.O. No. 103, to meet the country's fiscal targets. Under R.A. No. 9275, the LWUA is an attached agency of the Department of Public Works and Highway *(DPWH)*. The President, exercising his power of control over the executive department, including attached agencies, may limit the authority of the LWUA over the amounts of *per diem* it may allow.

Refund not necessary if the disbursements were made in good faith

Although the disbursements made by ZCWD may have been made without legal basis, the petitioner may be absolved from refunding the disbursements if it is shown that they were made in good faith. Good faith, in relation to the requirement of refund of disallowed benefits or allowances, is "that state of mind denoting 'honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even though technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transactions unconscientious.'"[27]

It is noteworthy that in *Mendoza*, the Court excused the GM therein from refunding the amounts he received, which were the subject of the ND, to wit:

> The salaries petitioner Mendoza received were fixed by the Talisay Water District's board of directors pursuant to Section 23 of the Presidential Decree No. 198. Petitioner Mendoza had no hand in fixing the amount of compensation he received. Moreover, at the time petitioner Mendoza received the disputed amount in 2005 and 2006, there was no jurisprudence yet ruling that water utilities are not exempted from the Salary Standardization Law.

[27] *PEZA v. COA*, 690 Phil. 104, 115 (2012), as cited in *MIA*, supra note 21.

> Pursuant to *De Jesus v. Commission on Audit,* petitioner Mendoza received the disallowed salaries in good faith. He need not refund the disallowed amount.

Similar to *Mendoza*, the increase in GM Bucoy's salary was disallowed by the COA for being in excess of the maximum amount allowed under the SSL. When the disbursements were made, no categorical pronouncement similar to that in *Mendoza* had been made that the LWDs were subject to the provisions of the SSL. As such, GM Bucoy is excused from refunding the amount she received corresponding to her salary and increased monetized leave credits on the basis of good faith.

Further, a thorough reaching of *Mendoza* and the cases cited therein would lead to the conclusion that ZCWD officers who approved the increase of GM Bucoy's are also not obliged either to refund the same. In *de Jesus v. Commission on Audit,*[28] the Court absolved the petitioner therein from refunding the disallowed amount on the basis of good faith, pursuant to *de Jesus and the Interim Board of Directors, Catbalogan Water District v. Commission on Audit.*[29] In the latter case, the Court absolved the Board of Directors from refunding the allowances they received because at the time they were disbursed, no ruling from the Court prohibiting the same had been made. Applying the ruling in *Blaquera v. Alcala (Blaquera)*,[30] the Court reasoned that the Board of Directors need not make a refund on the basis of good faith, because they had no knowledge that the payment was without a legal basis.

In *Blaquera*, the Court did not require government officials who approved the disallowed disbursements to refund the same on the basis of good faith, to wit:

> Untenable is petitioners' contention that the herein respondents be held personally liable for the refund in question. Absent a showing of bad faith or malice, public officers are not personally liable for damages resulting from the performance of official duties.
>
> Every public official is entitled to the presumption of good faith in the discharge of official duties. Absent any showing of bad faith or malice, there is likewise a presumption of regularity in the performance of official duties.

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[28] 466 Phil. 912 (2004).
[29] 451 Phil. 812 (2003).
[30] 356 Phil. 678 (1998).

xxxx

> **Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received.** Indeed, no *indicia* of bad faith can be detected under the attendant facts and circumstances. **The officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients** and the latter accepted the same with gratitude, confident that they richly deserve such benefits.
>
> [Emphases Supplied]

A careful reading of the above-cited jurisprudence shows that even approving officers may be excused from being personally liable to refund the amounts disallowed in a COA audit, provided that they had acted in good faith. Moreover, lack of knowledge of a similar ruling by this Court prohibiting a particular disbursement is a badge of good faith.

In the case at bench, there are several items that need not be refunded based on good faith. *First*, the BOD of ZCWD are not obliged to refund the amounts corresponding to GM Bucoy's salary and monetized leaved credits because at the time they were paid, no ruling similar to *Mendoza* - unequivocally declaring that LWDs are bound by the provisions of the SSL - had been made.

Second, the back payment of the COLA and AA need not be refunded because at the time they were paid, there was no similar ruling like the *MIA* case, where it was held that integration was the general rule and, therefore, benefits were deemed integrated notwithstanding the absence of a DBM issuance. Prior to *MIA*, there had been no categorical pronouncement that, by virtue of Section 12 of the SSL, benefits were deemed integrated, without a need of a subsequent issuance from the DBM. Consequently, the officers who authorized the back payment of the COLA and AA and the employees who received them believing to be entitled thereto need not refund the same. They were in good faith as they were oblivious that the said payments were improper.

Lastly, ZCWD cannot be faulted for paying the midyear incentives granted under its PRAISE Program because it merely relied on the authorization granted by the CSC, which found the same compliant with the CSC guidelines and approved its implementation. The same need not be refunded on the basis of good faith. The BOD of ZCWD allowed the payment of mid-year incentives believing that the supposed CSC

authorization was sufficient basis, while the employees received them under the impression that they rightfully deserved them.

Good faith, however, cannot be appreciated in the other release of funds made by ZCWD. *First*, it is noteworthy that as early as 1992, the Court has ruled in *PPA* that the RATA under the rates provided in LOI No. 97 must have been enjoyed since July 1, 1989 by incumbent employees as of the said date. ZCWD admitted that its employees were receiving RATA not based on the rates provided by LOI No. 97.

Second, ZCWD authorized the release of CNA incentives, in spite of its failure to strictly comply with PSLMC Resolution No. 2. ZCWD also failed to justify why it paid for a separate life insurance program other than the GSIS. Therefore, officers of ZCWD who were responsible for the release the aforementioned disbursements are bound to refund the same.

Lastly, good faith cannot absolve the ZCWD from refunding the *per diems* granted to the BOD. ZCWD insists that it merely relied on the LWUA Board Resolution which authorized the payment of the *per diems* that exceed the amount authorized under A.O. No. 103. The justification falls short of the standard of good faith required to be exempt from refunding disallowed benefits or allowances. ZCWD does not deny its awareness of the limits provided under A.O. No. 103. It nonetheless opted to simply depend on the LWUA issuance. In order for good faith to be appreciated, ZCWD must be without any knowledge of circumstances that would have placed it on guard.

ZCWD, being aware of the existence of A.O. No. 103 which placed a cap on the maximum *per diems* granted to the BOD of GOCCs, could have been more prudent to discontinue the grant of *per diems* based on the rates provided by the LWUA resolution, and instead, complied with the limitations set by A.O. No. 103. Thus, its BOD is bound to refund the amount of the surplus *per diems*, which they had authorized and received.

The ZCWD employees who merely received the disallowed amounts, are not obliged to refund the same because they had no participation in approving the release of the *per diem*. In *Silang v. Commission on Audit*,[31] the Court cleared the employees who received the disallowed benefits on the basis of good faith, to wit:

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

> In this case, the majority of the petitioners are the LGU of Tayabas, Quezon's rank-and-file employees and *bona fide* members of UNGKAT (named-below) who received the 2008 and 2009 CNA Incentives on the honest belief that UNGKAT was fully clothed with the authority to represent them in the CNA negotiations. As the records bear out, there was no indication that these rank-and-file employees, except the UNGKAT officers or members of its Board of Directors named below, had participated in any of the negotiations or were, in any manner, privy to the internal workings related to the approval of said incentives; **hence, under such limitation, the reasonable conclusion is that they were mere passive recipients who cannot be charged with knowledge of any irregularity attending the disallowed disbursement. Verily, good faith is anchored on an honest belief that one is legally entitled to the benefit, as said employees did so believe in this case**. Therefore, said petitioners should not be held liable to refund what they had unwittingly received.
>
> [Emphasis Supplied]

Unlike the officers of ZCWD who authorized the payment of the disallowed disbursements, these employees were merely passive recipients who honestly believed they were entitled to the said benefits as their payment was ratified by their officers. They were in good faith as they were unaware that the benefits they received were either without basis or had failed to comply with the requirements of the law. Thus, the employees who received the CNA incentives and the 14th month pay and the employees who were covered by the life insurance program other than the GSIS need not refund the amounts paid out for these benefits.

WHEREFORE, the October 28, 2010 Decision and the June 6, 2014 Resolution of the Commission on Audit are **AFFIRMED** with **MODIFICATION** in that the recipients and the officers who had authorized the following disbursements be absolved from refunding the amounts paid in connection with the following: (1) the salary increase of GM Bucoy and the corresponding increase in her monetized leave credits; (2) the back payment of the COLA and AA; and (3) the midyear incentives, pursuant to its PRAISE Program. As to the other items, only the officers who authorized their release are bound to refund the same.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

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

MARIA LOURDES P. A. SERENO
Chief Justice

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