Republic of the Philippines
# Supreme Court
Manila

**EN BANC**

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| **METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM,** Petitioner, | **G.R. No. 195105** |
| *- versus -* | |
| **COMMISSION ON AUDIT,** Respondent. | |
| x- - - - - - - - - - - - - - - - - - - - - - - - x | |
| **DARLINA T. UY, LEONOR C. CLEOFAS, MA. LOURDES R. NAZ, JOCELYN M. TOLEDO, LOIDA G. CEGUERRA, and MIRIAM S. FULGUERAS,** Petitioners, | **G.R. No. 220729** |
| *- versus -* | Present: *SERENO, *C.J.* **CARPIO, ***VELASCO, JR., LEONARDO-DE CASTRO, PERALTA, BERSAMIN, DEL CASTILLO, PERLAS-BERNABE, LEONEN, ****JARDELEZA, CAGUIOA, MARTIRES, TIJAM, *****REYES, JR., and GESMUNDO, *JJ.:* |
| **METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, COMMISSION ON AUDIT,** Respondent. | Promulgated: November 21, 2017 |

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* On leave.
** Acting Chief Justice per Special Order No. 2483 dated September, 2017.
*** On official leave.
**** No part due to prior action as Solicitor General.
***** On official leave.

# DECISION

**BERSAMIN, *J.*:**

The petitioners, albeit officials of the agency, cannot be held personally liable for the disallowed benefits because they had no participation in the approval thereof. The recipients of the benefits, having acted in good faith because of their honest belief that the grant of the benefits had legal basis, need not refund the amounts received.

## The Case

Assailed in G.R. No. 195105 are Decision No. 2009-072 dated September 1, 2009[1] and Decision No. 2010-145 dated December 30, 2010,[2] whereby the Commission on Audit (COA Proper) affirmed the disallowance of certain benefits received by the employees of petitioner Metropolitan Waterworks and Sewerage System's (MWSS), and ordered the officers of the MWSS responsible for the approval and payment of the benefits to refund the total amount disallowed.

In G.R. No. 220729, the petitioners seek to set aside COA Order of Execution No. 2015-174(COE) dated August 6, 2015,[3] whereby the COA identified them as the MWSS officers personally liable to refund the total amount of the benefits and allowances subject of the disallowance being assailed in G.R. No. 195105.

## Antecedents

Prior to the enactment of Republic Act No. 6758 (*Compensation and Position Classification Act of 1989*), the Board of Trustees of the MWSS approved the grant of certain benefits to its employees over a period of time. The benefits included the mid-year financial assistance granted on May 21, 1987; *bigay-pala* approved on September 24, 1987; meal/medical allowance granted on March 6, 1980; productivity bonus since October 29, 1987; year-end financial assistance allowed since November 18, 1987; and longevity pay, which the employees had been enjoying since January 31, 1972.[4]

Upon the enactment of R.A. No. 6758, Lakambini Q. Razon, then the Resident Auditor of MWSS, issued a Notice of Disallowance (ND) dated

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1 *Rollo* (G.R. No. 195105), pp. 32-46.
2 Id. at 27-31.
3 *Rollo* (G.R. No. 220729), pp. 54-57.
4 *Rollo* (G.R. No. 195105), pp. 5-6.

August 15, 2000 [ND-2000-017-07 (99)] disallowing the payment of the benefits to the MWSS employees for the period from January 2000 to November 2000.[5] Subsequently, the COA specified the following NDs:[6]

| | **Amount Disallowed** | **Nature of Payment** | **Reason for Disallowance** |
|---|---|---|---|
| 2001-025-05 (00)<br>2001-006-05 (00) | ₱2,128,780.40<br>601,919.70 | Mid-Year FA – CY-2000 | Violation of Section 12, RA 6758 |
| 2001-024-05 (00)<br>2001-022-05 (00) | 1,929,610.60<br>799,682.04 | Year-End FA – CY-2000 | Violation of Section 12, RA 6758 |
| 2001-021-05 (00) | 742,573.90 | Bigay-Pala Anniv. Bonus | Violation of Section 12, RA 6758 |
| 2001-023-05 (00) | 2,147,432.60 | PIB CY 1999 | Violation of:<br>a) AO No. 161 dated Dec. 6, 1994<br>b) NCC No. 73 dated Dec. 27, 1994<br>c) NCC No. 73A dated Mar. 1, 1995 |
| 2001-019-05 (00) | 235,000.00 | Medical Allowance CY 2000 | Increase after 1989 is in violation of RA 6758 |
| 2001-018-05 (00) | 155,838.32 | RATA (Jan.-Aug. 2000) | Not entitled. Violation of Sec. 41 GAA 2000 and COA Memo No. 90-653 dated June 4, 1990 |
| **Total** | **₱8,740,837.56** | | |

On October 3, 2001, the MWSS moved for the reconsideration of the NDs.[7] As a consequence, the COA Legal and Adjudication Office-Corporate (COA-LAO) modified its decision and allowed the payment of the mid-year financial assistance, year-end financial assistance, *bigay-pala* anniversary bonus, and medical allowance to employees already enjoying the benefits as of June 30, 1989,[8] or on or before the July 1, 1989 effectivity of R.A. No. 6758. The COA-LAO also allowed the PIB only to the extent of ₱2,000.00 per occupied/filled up position under Administrative Order No. 161; and the RATA equivalent to 40% of the basic salary to employees already employed and enjoying the benefit as of July 1, 1989, while the employees hired thereafter would receive RATA as authorized under the General Appropriations Act.[9]

The MWSS appealed but the COA Proper denied the appeal on September 1, 2009 for its lack of merit,[10] to wit:

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5 Id. at 68.
6 Id. at 32-33.
7 Id. at 55-61.
8 Id. at 108.
9 Id. at 108-109.
10 Id. at 32-46.

**WHEREFORE**, foregoing premises considered, herein appeal is hereby **DENIED** for lack of merit and the following disallowances are hereby **SUSTAINED,** with some modifications in the amounts, viz:

| Benefit | Basis | Amount Disallowed |
|---|---|---|
| Mid-Year FA 2000 | Per ND No. 2001-025-05 (00) | ₱ 2,128,780.40 |
| Mid-Year FA 2000 | Per ND No. 2001-006-05 (00) | 601,919.70 |
| Year-End FA 2000 | Per ND No. 2001-024-05 (00) | 1,929,610.60 |
| Year-End FA 2000 | Per ND No. 2001-022-05 (00) (as rectified by the Auditor) | 735,243.34 |
| Bigay Pala Anniv Bonus | Per ND No. 2001-021-05 (00) | 742,573.90 |
| PIB | Under ND No. 2001-023-05 (00) Per computation | 2,157,932.65 |
| Medical Allowance | Under ND No. 2001-019-05 (00) Per computation | 287,500.00 |
| RATA | Under ND No. 2001-018-05 (00) Per computation | 179,387.72 |
| | **TOTAL** | **₱ 8,762,948.31** |

The officials who approved/authorized the grant of subject benefits are required to refund the total disallowed amount of ₱8,762,948.31. The Supervising Auditor is also directed to inform this Commission of the settlement made thereon.[11]

The COA Proper later denied the MWSS's motion for reconsideration with finality on January 6, 2011.[12]

Meanwhile, on August 6, 2015, the COA issued COA Order of Execution (COE) 2015-174[13] addressed to the Administrator of the MWSS identifying the petitioners in G.R. No. 220729 (namely: Darlina T. Uy, Leonor C. Cleofas, Ma. Lourdes R. Naz, Jocelyn M. Toledo, Loida G. Ceguerra, and Miriam S. Fulgueras), along with eight other MWSS officials, as among the certifying/approving officials personally liable to refund the disallowed amounts. COE 2015-174 further stated:

> Please withhold the payment of the salaries or any amount due to the above-named persons liable for the settlement of their liabilities pursuant to the NDs/Decisions referred to above, copies attached and made integral parts hereof.
>
> In case any of the above-named persons are no longer in the service, please cause the collection or settlement of the same directly from them, and inform this office within fifteen (15) days from receipt of this COE of efforts made to collect pursuant hereto.
>
> Payment of salaries or any amount due them in violation of this instruction will be disallowed in audit and you will be held liable therefor.

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11 Id. at 45.
12 Id. at 110.
13 *Rollo* (G.R. No. 220729), pp. 54-58.

> If full settlement has been made, please disregard this COE, and furnish this office with authenticated copy/ies of official receipts or equivalent proof of settlement, for record and monitoring purposes.[14]

On August 20, 2015, the petitioners, asserting that the COA had no basis in rendering them personally liable to refund the disallowed amounts, filed a motion to set aside COE 2015-174.[15]

In the letter-reply dated September 7, 2015,[16] however, then COA Assistant Commissioner and General Counsel (now Commissioner) Isabel D. Agito denied due course to the petitioners' motion to set aside COE 2015-174, stating in part:

> Please be informed that COA Resolution No. 2011-006 dated August 17, 2011, amended Section 9, Rule X of the 2009 Revised Rules of Procedure of the Commission on Audit and adopted Section 8, Rule 64 of the 1997 Revised Rules of Court, which provides:
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> > A decision or resolution of the Commission upon any matter within its jurisdiction **shall become final and executory** after the lapse of thirty (30) days from notice of the decision or resolution.
> >
> > **The filing of a petition for *certiorari* shall not stay the execution** of the judgment or final order or resolution sought to be reviewed, **unless the Supreme Court shall direct otherwise upon such terms as it may deem just.**
>
> In view thereof, the assailed COA decision became final and executory in the absence of a Temporary Restraining Order issued by the SC. x x x[17]

Accordingly, the petitioners have come to the Court for relief.

## Issues

The petitioners seek the review of the NDs and the setting aside of COE 2015-174, asserting that the COA Proper thereby gravely abused its discretion amounting to lack or excess of jurisdiction.

The MWSS raises the following issues in G.R. No. 195105:

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14 Id. at 55.
15 Id. at 85-93.
16 Id. at 265.
17 Id.

**1. WHETHER OR NOT RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OF JURISDICTION, IN AFFIRMING THE DISALLOWANCE OF THE MID-YEAR FINANCIAL ASSISTANCE FOR CY 2000, YEAR-END FINANCIAL ASSISTANCE FOR CY 2000, BIGAY PALA 2000, ANNIVERSARY BONUS, PRODUCTIVITY AND INCENTIVE BONUS CY 1999, MEDICAL ALLOWANCE CY 2000 AND REPRESENTATION AND TRANSPORTATION ALLOWANCE (RATA) JANUARY–AUGUST 2000 GRANTED TO PETITIONER MWSS' EMPLOYEES AND OFFICIALS.**

2. **WHETHER OR NOT RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OF JURISDICTION, IN RULING THAT THE OFFICIALS WHO APPROVED AND AUTHORIZED THE GRANT OF SUBJECT BENEFITS ARE REQUIRED TO REFUND THE TOTAL DISALLOWED AMOUNT.**[18]

The MWSS submits that the COA committed grave abuse of discretion in issuing the NDs inasmuch as the grant of the benefits by its Board of Trustees had legal bases, rendering the grant valid; that RA No. 6758 did not repeal the MWSS Charter, which afforded authority to the Board of Trustees to grant or to continue granting benefits to its employees; that the benefits specified in the Concession Agreement had been duly approved by then President Ramos, through Secretary Gregorio Vigilar of the Department of Public Works and Highways (DPWH); that the requirement that any other benefits granted must have authority from the President or the Department of Budget and Management (DBM) had thus been complied with; and that the grant of RATA had already been resolved in favor of the MWSS in *Cruz v. Commission on Audit*.[19]

In contrast, COA insists that the mid-year and year-end financial assistance and the *bigay-pala* anniversary bonus initially granted in 1987 were not among the benefits authorized under Item 5 of Letter of Implementation (LOI) No. 97 dated August 31, 1979;[20] that said benefits had been granted pursuant to board resolutions without the imprimatur of the Office of the President (OP) as required by Section 2 of Presidential Decree (PD) No. 985;[21] that the act of the Board of Trustees of the MWSS in increasing the amount of medical allowance without the authority from the OP was an *ultra vires* act; and that the productivity incentive benefit equivalent to one-month pay in 1999 was grossly in excess of the prescribed ₱2,000.00 cap in violation of A.O. No. 161.[22]

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18 *Rollo* (G.R. No. 195105), p. 9.
19 G.R. No. 134740, October 23, 2001, 368 SCRA 85, 89.
20 *Rollo* (G.R. No. 195105), p. 36.
21 *The Budgetary Reform Decree on Compensation and Position Classification of 1976.*
22 *Rollo* (G.R. No. 195105), p. 43.

The petitioners in G.R. No. 220729 assert:

I.

COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK/EXCESS OF JURISDICTION WHEN IT DEMANDED REFUND FROM THE PETITIONERS UNDER COE 2015-174 WHEN THEIR BAD FAITH AND LIABILITIES WERE NEVER DISCUSSED NOR ESTABLISHED UNDER THE DECISIONS RENDERED.

II.

COA CARELESSLY LISTED ALL IDENTIFIABLE NAMES ON THE PAYROLLS WITHOUT ASSESSING THE NATURE OF THE CERTIFICATIONS MADE BY THE SIGNATORIES;

EXPENDITURE WAS LEGAL: PETITIONERS RELIED IN GOOD FAITH ON (1) THE CONFIRMATION MADE BY FORMER PRESIDENT FIDEL V. RAMOS, (2) BOARD RESOLUTIONS OF THE BOARD OF TRUSTEES AND (3) THE CERTIFICATION OF AVAILABILITY OF THE BUDGET WHEN THEY AFFIXED THEIR SIGNATURES ON THE PAYROLLS;

PETITIONERS WERE NOT DIRECTLY RESPONSIBLE FOR THE DISBURSEMENT: NONE OF THE PETITIONERS HAD THE POWER TO GRANT THE BENEFITS ASSAILED;

PETITIONERS ARE NOT ACCOUNTABLE OFFICERS UNDER SECTION 106 OF PD 1445 NEITHER POSSESSED NOR HAD CUSTODY OF GOVERNMENT FUNDS.

III.

EXECUTION IS PREMATURE UNDER SECTION 9, RULE X OF THE 2009 COA RULES OF PROCEDURE (WITHOUT AMENDMENTS); APPLICATION OF COA RESOLUTION 2011-006 DATED AFTER THE FILING OF THE INSTANT PETITION IS MISPLACED

IV.

MWSS AND COA MUST DESIST FROM CARRYING OUT COE 2015-174 AND DEDUCTING FROM THE PETITIONERS' SALARIES THE ASSAILED DISALLOWANCES BECAUSE IT VIOLATES THE PETITIONERS' RIGHT TO DUE PROCESS

V

THE *EX PARTE* ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION AND/OR TEMPORARY RESTRAINING ORDER IS PROPER TO RESTRAIN MWSS AND COA FROM IMMEDIATELY IMPLEMENTING COE 2015-174 AND CARRYING OUT THE DEDUCTIONS AGAINST PETITIONERS.

The petitioners allege that under Section 9, Rule X of the 2009 COA Rules of Procedure a decision of COA became final and executory after 30 days from notice thereof unless a motion for reconsideration or a recourse to the Court was seasonably filed; that COA instead applied its Resolution No. 2011-006 dated August 17, 2011, whereby it amended said Section 9 to

provide that the petition for *certiorari* should not stay the execution of the decision unless the Court ordered so; and that the amendatory rule should not be held to apply to them retrospectively.

In fine, the issues herein are: (1) whether or not COA gravely abused its discretion in upholding the validity of the NDs issued against MWSS; and (2) in case of an affirmative response to the first issue, whether the petitioners in G.R. No. 220729 were liable to refund the disallowed amount.

## Ruling of the Court

After a careful evaluation of the facts and pertinent laws, the Court finds and declares that COA Proper did not gravely abuse its discretion in issuing the NDs against the MWSS; but the Court holds that the petitioners in G.R. No. 220729 should not be held liable to refund the disallowed benefits and allowances.

### 1.
### Propriety of applying COA Resolution No. 2011-006, amending the 2009 COA Revised Rules of Procedures

We shall deal first with the procedural question on which rule of procedure was applicable.

In issuing COE 2015-174, COA applied COA's Resolution No. 2011-006, and held that notwithstanding the filing of the petition for *certiorari* under Rule 64 of the *Rules of Court*, its decisions should forthwith commence and would not be stayed unless the Court itself directed otherwise. To recall, the original rule (Section 9, Rule X of the 2009 COA Rules of Procedure) deemed the finality and execution of the decision stayed by the filing of the motion for reconsideration or of the recourse in this Court.

We note that the petition in G.R. No. 195105 was filed on February 1, 2011 and COE 2015-174 was issued on September 7, 2015; and Resolution No. 2011-006 was approved on August 17, 2011 and took effect 15 days after its publication in two newspapers of general circulation. It is evident that if the old rule on the finality of judgment were to be applied, the petitioners would have no reason to apply for the temporary restraining order and/or writ of preliminary injunction to prevent COA from deeming the assailed decisions executory and issuing COE 2015-174, considering that their salaries and other benefits were not in any danger of being withheld pending the final resolution of their petitions by the Court. Instead, COA retroactively applied Resolution No. 2011-006.

We rule that such application by COA constituted grave abuse of discretion under the circumstances obtaining herein.

The general rule that a rule of procedure can be given retroactive effect admits of exceptions, such as where the rule itself expressly or by necessary implication provides that pending actions are excepted from its operation, or where to apply it to pending proceedings would impair vested rights.[23] In the situation before us, there were already four years and seven months from the filing of the petition in G.R. No. 195105, which resulted in the stay of execution of Decision No. 2009-072 dated September 1, 2009 and Decision No. 2010-145 dated December 30, 2010. To allow the retroactive application of Resolution No. 2011-006 would really create a great injustice to the petitioners who were governed by the previous rule at the time of the filing of the petition of the MWSS to assail the decisions. Such retroactive application would deprive them of their salaries and compensation, and would not be fair to them, to say the least.

**2.**
**R.A. No. 6758 repealed the pertinent provisions of the MWSS's corporate charter**

Section 16 of R.A. No. 6758 provides:

> **Section 16.** ***Repeal of Special Salary Laws and Regulations.*** – All laws, decrees, executive orders, **corporate charters**, and other issuances **or parts thereof**, that exempt agencies from the coverage of the System, or **that authorize and fix** position classification, **salaries, pay rates or allowances** of specified positions, or groups of officials and employees or of agencies, which are inconsistent with the System, including the proviso under Section 2, and Section 16 of Presidential Decree No. 985 are hereby repealed. (Emphasis supplied)

Upon the effectivity of R.A. No. 6758, government-owned and controlled corporations (GOCCs) were included in the Compensation and Position Classification System under the law. As the aforequoted provision indicates, R.A. No. 6758 has repealed all corporate charters of the GOCCs, and such repeal has been put to rest by this Court. In the 1999 ruling in *Philippine International Trading Corporation v. Commission on Audit*,[24] the Court opined:

> x x x [T]he repeal by Section 16 of RA 6758 of "all corporate charters that exempt agencies from the coverage of the System" was clear and expressed necessarily to achieve the purposes for which the law was

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[23] *Tan Jr. v. Court of Appeals,* G.R. No.136368, January 16, 2002, 373 SCRA 524, 537.
[24] G.R. No. 132593, June 25, 1999, 309 SCRA 177.

> enacted, that is, the standardization of salaries of all employees in government owned and/or controlled corporations to achieve "equal pay for substantially equal work." Henceforth, PITC should now be considered as covered by laws prescribing a compensation and position classification system in the government including RA 6758. This is without prejudice, however, as discussed above, to the non-diminution of pay of incumbents as of July 1, 1989 as provided in Sections 12 and 17 of said law.[25]

As things now stand, the governing boards of the GOCCs no longer wield the power to fix compensation and allowances of their personnel, including the authority to increase the rates, pursuant to their specific charters.

COA rightly submits that the grant by the Board of Trustees of the MWSS of the benefits constituted an *ultra vires* act. Verily, what is *ultra vires* or beyond the power of the MWSS to do must also be *ultra vires* or beyond the power of its Board of Trustees to undertake. The powers of the Board of Trustees, who under the law were authorized to exercise the corporate powers, were necessarily limited by restrictions imposed by law on the MWSS itself, considering that Board of Trustees only acted in behalf of the latter.[26] Upon the effective repeal of the MWSS Charter, the Board of Trustees could no longer fix salaries, pay rates or allowances of its officials and employees upon the effectivity of R.A. No. 6758.

## 3.
## Consolidation of allowances and compensation of government employees

Section 12 of R.A. No. 6758 states:

> **Section 12.** ***Consolidation of Allowances and Compensation.*** - All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.
>
> Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

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[25] Id. at 191-192.

[26] *Republic v. Sandiganbayan (First Division),* G.R. Nos. 166859, 169203, and 180702, April 12, 2011, 648 SCRA 47, 293-294 (Dissenting Opinion of Associate Justice Arturo D. Brion).

This provision consolidated or integrated allowances in the standardized salary in the Philippine position classification and compensation system, which previous laws on standardization of compensation of government officials and employees did not do. Presidential Decree No. 985, as amended by Presidential Decree No. 1597,[27] the law antecedent to Republic Act No. 6758, repealed all laws, decrees, executive orders, and other issuances or parts thereof that authorized the grant of allowances in favor of officials and employees occupying certain positions. Under Presidential Decree No. 985, allowances, honoraria, and other fringe benefits could only be granted to government employees upon approval of the President with the recommendation of the Commissioner of the Budget Commission.[28]

It is the distinct policy of Section 12, supra, to standardize salary rates among government personnel and to do away with multiple allowances and other incentive packages as well as the resulting differences in compensation among them. Thus, the general rule now is that all allowances are deemed included in the standardized salary, unless excluded by law or by an issuance by DBM. The integration of the benefits and allowances is by legal fiction.[29] Without the issuance by DBM, the enumerated non-integrated allowances in Section 12 remain exclusive.[30]

The following non-integrated allowances under Section 12 are the only allowances that government personnel may continue to receive in addition to their standardized salary rates, unless DBM shall add other items thereto, namely:

1. Representation and transportation allowances (RATA);

2. Clothing and laundry allowances;

3. Subsistence allowance of marine officers and crew on board government vessels;

4. Subsistence allowance of hospital personnel;

5. Hazard pay;

6. Allowances of foreign service personnel stationed abroad; and

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[27] *Further Rationalizing the System of Compensation and Position Classification in the National Budget.*

[28] *Maritime Industry Authority v. Commission on Audit,* G.R. No. 185812, January 13, 2015, 745 SCRA 300, 320.

[29] Id. at 321.

[30] Id. at 322.

7. Such other additional compensation not otherwise specified herein as may be determined by the DBM.

On February 15, 1999, DBM issued the Corporate Compensation Circular (DBM-CCC) No. 10 to initiate the rules and regulations implementing R.A. No. 6758 for the GOCCs and government financial institutions (GFIs). DBM-CCC No. 10 listed other non-integrated allowances allowed *only* to incumbents of positions authorized and actually receiving such allowances/benefits as of June 30, 1989.[31] Paragraph 5.4-5.6 of DBM-CCC No. 10 further provided:

> 5.4. The following allowances/fringe benefits which were authorized to GOCCs/GFIs under the standardized Position Classification and Compensation Plan x x x pursuant to P.D. No. 985, as amended by P.D. No. 1597, the Compensation Standardization Law in operation prior to R.A. No. 6758, and to other related issuances **are not to be integrated into the basic salary** and **allowed to be continued after June 30, 1989 only to incumbents of positions who are authorized and actually receiving such allowances/benefits as of said date** x x x:
>
> 5.4.1. Representation and Transportation Allowance (RATA)
>
> x x x x
>
> 5.5. The following allowances/fringe benefits authorized to GOCCs/GFIs pursuant to the aforementioned issuances **are not likewise to be integrated into the basic salary** and **allowed to be continued only for incumbents of positions as of June 30, 1989 who are authorized and actually receiving said allowances/benefits as of said date** x x x:
>
> x x x x
>
> 5.5.4. Medical/dental/optical allowances/benefits;
>
> x x x x
>
> 5.6. Payment of **other allowances/fringe benefits** and all other forms of compensation granted on top of basic salary, whether in cash or in kind, **not mentioned in Sub-Paragraphs 5.4 and 5.5 above** shall continue to be **not authorized**. Payment made for **such unauthorized allowances/fringe benefits shall be considered as illegal disbursement of public funds**. (Bold underscoring supplied for emphasis)

Accordingly, the disallowed benefits and allowances of MWSS's officials and employees, with the exception of the RATA and the medical allowance, were not excluded by R.A. No. 6758 or any issuance by DBM. It is understood that as a general rule such benefits and allowances were already included and given to the officials and employees when they

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[31] Paragraph 5.4 and 5.5, DBM-CCC No. 10.

received their basic salaries. Their receipt of the disallowed benefits and allowances was tantamount to double compensation. It is thus incumbent upon the MWSS to prove that the disallowed allowances were sanctioned by the Office of the President or DBM, as the laws required.

The MWSS relies primarily on Exhibit F of the Concession Agreement captioned "Existing MWSS Fringe Benefits" to support the Board of Trustees' grant of the questioned allowances. It must be noted, however, that it was not the 1997 Concession Agreement that authorized the release or grant of the allowances, as borne by the records, but the resolutions of the Board of Trustees, which were done contrary to the express mandate of R.A. No. 6758. We cannot subscribe to the MWSS's argument that the allowances already bore the imprimatur of the Office of the President through Secretary Vigilar of the DPWH on the basis of the latter's signing of the Concession Agreement because such part of the agreement contravened R.A. No. 6758; hence, the same was invalid. Under Section 16.13 of the Concession Agreement, any invalid or unenforceable portion or provision should be deemed severed from the agreement. Accordingly, Exhibit F of the Concession Agreement, being contrary to R.A. No. 6758, could not be made a source of any right or authority to release the precluded allowances. Moreover, the law is clear that it should be DBM, not the DPWH, that must determine the other additional compensation not specified under the law.

Although it was the clear policy intent of R.A. No. 6758 to standardize salary rates among government personnel, Congress nonetheless saw, as made clear in Section 12 and Section 17 of the law, the need for equity and justice in adopting the policy of non-diminution of pay when it authorized incumbents as of July 1, 1989 to receive salaries and/or allowances over and above those authorized by R.A. No. 6758. In this regard, we held in *Aquino v. Philippine Ports Authority*[32] that no financial or non-financial incentive could be awarded to employees of the GOCCs aside from benefits being received by incumbent officials and employees as of July 1, 1989. This Court then observed:

> 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 predecessors RATA privilege or to the transition allowance. After 1 July 1989 the additional financial incentives such as RATA may no longer be given by GOCCs with the exemption of those which were authorized to be continued under Section 12 of RA 6758.

In *Philippine International Trading Corporation v. Commission on Audit*,[33] we also held that incumbents as of July 1, 1989 should continue to

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[32] G.R. No. 181973, April 17, 2013, 696 SCRA 666, 682.
[33] Supra note 25, at 185.

receive the allowance mentioned in Section 12 even after R.A. No. 6758 took effect, *viz.*:

> First of all, we must mention that this Court has confirmed in *Philippine Ports Authority vs. Commission on Audit* the legislative intent to protect incumbents who are receiving salaries and/or allowances over and above those authorized by RA 6758 to continue to receive the same even after RA 6758 took effect. In reserving the benefit to incumbents, the legislature has manifested its intent to gradually phase out this privilege without upsetting the policy of non-diminution of pay and consistent with the rule that laws should only be applied prospectively in the spirit of fairness and justice. x x x

Clearly, the Court has been very consistent in construing the second sentence in the first paragraph of Section 12, supra, as prescribing July 1, 1989 as the qualifying date to determine whether or not an employee was an *incumbent* and *receiving* the non-integrated remuneration or benefit *for purposes of entitling the employee to its continued grant.* Stated differently, those allowances or fringe benefits (whether RATA or other benefits) that have not been integrated into the standardized salary are allowed to be continued only for *incumbents* of positions as of July 1, 1989 and who were actually *receiving* said allowances or fringe benefits as of said date.[34]

It is basic enough that the erroneous application and enforcement of the law by public officers do not estop the Government from subsequently making a correction of the errors. Practice, without more, no matter how long continued, cannot give rise to any vested right if it is contrary to law.[35] Accordingly, COA correctly held that only the following benefits could be granted to its officers and employees incumbent as of July 1, 1989: the medical allowance as authorized under LOI No. 97, the RATA equivalent to 40% of the basic salary, and the productivity incentive benefits to the extent of the ₱2,000.00 cap mandated by law.

In this respect, inasmuch as the MWSS did not substantiate the entitlement of its officers and employees to the mid-year and year-end financial assistance as well as the *bigay-pala* anniversary bonus, said benefits must be disallowed in full without any need to distinguish between employees hired before or after July 1, 1989.

**4.**
**COA did not commit grave abuse of discretion in issuing the NDs**

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[34] Supra note 32, at 679.
[35] *Philippine Ports Authority v. Commission on Audit,* G.R. No. 159200, February 16, 2006, 482 SCRA 490, 495.

In the discharge of its constitutional mandate, COA is endowed with enough latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds. It has the power to ascertain whether public funds were utilized for the purpose for which they had been intended.[36] The 1987 Constitution has expressly made COA the guardian of public funds, vesting it with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property, including the exclusive authority to define the scope of its audit and examination, establish the techniques and methods for such review, and promulgate accounting and auditing rules and regulations.[37]

We find no grave abuse of discretion on the part of COA in issuing the assailed Decisions.

By *grave abuse of discretion* is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[38] The burden is on the part of petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave.[39]

We find no grave abuse of discretion on the part of COA in issuing the assailed Decisions. On the contrary, COA only thereby steadfastly complied with its duty under the 1987 Constitution to exercise its general audit power.

**5.**
**Liability of the approving officials and obligation to return the disallowed benefits**

Section 16 of the 2009 COA Rules and Regulations on Settlement of Accounts states:

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[36] *Sanchez v. Commission on Audit,* G.R. No. 127545, April 23, 2008, 552 SCRA 471, 487-488.
[37] *Yap v. Commission on Audit*, G.R. No. 158562, April 23, 2010, 619 SCRA 154, 167-168.
[38] *United Coconut Planters Bank v. Looyuko*, G.R. No. 156337, September 28, 2007, 534 SCRA 322, 331.
[39] *Tan v. Antazo,* G.R. No. 187208, February 23, 2011, 644 SCRA 337, 342.

**Section 16. Determination of Persons Responsible/Liable.**

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

x x x x

16.1.3 Public officers who approve or authorize expenditures shall be held liable for losses arising out of their negligence or failure to exercise the diligence of a good father of a family.

On the other hand, the solidary liability is in accordance with Book VI, Chapter V, Section 43 of the *Administrative Code*, to wit:

*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.

In *Blaquera v. Alcala*,[40] the Court did not require the officials and employees of the different government departments and agencies to refund the productivity incentive bonus they had received because of the absence of bad faith, and because the disbursement was made in the honest belief that the recipients deserved the amounts. The *Blaquera* ruling was modified in *Casal v. Commission on Audit*,[41] where the Court ruled that the approving officials were liable to refund the incentive award due to their patent disregard of the issuances of the President and the directives of COA. The officials' failure to observe the issuances amounted to gross negligence, which was inconsistent with the presumption of good faith. Applying both the *Blaquera* and the *Casal* rulings, we declared in *Velasco v. Commission on Audit*[42] that:

Similarly in the present case, the blatant failure of the petitioners-approving officers to abide with the provisions of AO 103 and AO 161 overcame the presumption of good faith. The deliberate disregard of these issuances is equivalent to gross negligence amounting to bad faith. Therefore, the petitioners-approving officers are accountable for the refund of the subject incentives which they received.

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40 G.R. No. 109406, September 11, 1998, 295 SCRA 366, 447-448.
41 G.R. No. 149633, November 30, 2006, 509 SCRA 138, 149.
42 G.R. No. 189774, September 18, 2012, 681 SCRA 102, 117.

> However, with regard to the employees who had no participation in the approval of the subject incentives, they were neither in bad faith nor were they grossly negligent for having received the benefits under the circumstances. The approving officers' allowance of the said awards certainly tended to give it a color of legality from the perspective of these employees. Being in good faith, they are therefore under no obligation to refund the subject benefits which they received.

Based on the evolving jurisprudence, and in view of Section 16 of the 2009 Rules and Regulations on Settlement of Accounts, the approving officers of the MWSS were personally liable for the amount of disallowed benefits. Despite the lack of authority for granting the benefits, they still approved the grant and release of the benefits in excess of the allowable amounts and extended the same benefits to its officials and employees not entitled thereto, patently contravening the letter and spirit of R.A. No. 6758 and related laws. They were very adamant in their stance that R.A. No. 6758 did not apply to them despite its clear provisions and the relevant issuances of DBM, thereby deliberately disregarding the basic principle of statutory construction that when the law was clear, there should be no room for interpretation but only application. Moreover, as we have earlier pointed out, institutional practice is not an excuse to allow disbursements that were otherwise contrary to law.

## 6.
## Who are the MWSS approving officials liable to return the disallowed benefits?

The petitioners in G.R. No. 220729 contend that they should not be held liable to return the disallowed amounts. Although they held certain management positions in the MWSS, they neither possessed nor had custody of the government funds as to allow them to grant the release of certain allowances and benefits. Their respective positions at the time the disallowed benefits were initially approved are as follows:

| PETITIONER | POSITION |
|---|---|
| Loida G. Ceguerra | Division/Branch Manager – Asset Management and General Services |
| Leonor C. Cleofas | Acting Manager – Engineering and Project Management Office |
| Ma. Lourdes R. Naz | Department Manager – Office of the Board of Trustees |
| Darlina T. Uy | Department Manager – Board Secretariat/ Legal Department |
| Jocelyn M. Toledo | OIC – Personnel/ OIC – Administrative Services |
| Miriam S. Fulgueras | Chief, Controllership and Accounting Section |

In its comment dated February 1, 2016, COA posited that the Board of Trustees of the MWSS should be held liable for the disallowed amounts, to wit:

> As discussed in the Comment to the Petition filed by respondent before this Honorable Court, the Board failed to comply with proper requirements in granting the benefits.
>
> Petitioner now argues that the Board members who approved the benefits are not at fault and they should not be held liable.
>
> Suffice it to say that being officials of MWSS, it is incumbent upon them to know the rules and law relative to the granting of benefits. Failure to comply with said rules constitutes gross negligence.
>
> x x x x

The petitioners in G.R. No. 220727 counter that the Board of Trustees that had authorized and approved the grant of the benefits should be held liable for the amounts and not them.

We rule in favor of the petitioners in G.R. No. 220727. Although they were officers of the MWSS, they had nothing to do with policy-making or decision-making for the MWSS, and were merely involved in its day-to-day operations. In particular, petitioners Ceguerra, Cleofas, Naz, and Uy were department/division managers who had only certified that their subordinates whose names appeared in the payrolls had rendered actual service. Petitioner Toledo, being the one who had prepared the payroll forms, only certified that the payees had not been on AWOL on the dates specified. Lastly, petitioner Fulgueras, then the Chief Corporate Accountant, only checked the entries in the journal as against the payrolls and disbursement vouchers.[43]

The COA has not proved or shown that the petitioners, among others, were the approving officers contemplated by law to be personally liable to refund the illegal disbursements in the MWSS. While it is true that there was no distinct and specific definition as to who were the particular approving officers as well as the respective extent of their participation in the process of determining their liabilities for the refund of the disallowed amounts, we can conclude from the fiscal operation and administration of the MWSS how the process went when it granted and paid out benefits to its personnel.

The Board of Trustees, in whom all the corporate powers and functions of the MWSS were vested, governed the agency. In turn, the

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[43] *Rollo* (G.R. No. 220729), p. 625.

Management of the MWSS was at the center of decision-making for the day-to-day affairs of the MWSS.[44] Nonetheless, it was the Board of Trustees, through board resolution, that issued the authority granting the benefits and allowances to the employees. The Management, acting by virtue of and pursuant to the resolution, implemented the same. In this connection, it is notable that the resolution approving the release of the mid-year financial assistance for CY 2000 facially indicated that the authority had emanated from the Board of Trustees.[45]

Under the circumstances, the petitioners in G.R. No. 220727, albeit officials of the MWSS, were not members of the Board of Trustees and, as such, could not be held personally liable for the disallowed benefits by virtue of their having had no part in the approval of the disallowed benefits. In turn, the recipients of the benefits – officials and employees alike – were not liable to refund the amounts received for having acted in good faith due to their honest belief that the grant of the benefits had legal basis.

**WHEREFORE,** the Court:

1. **DISMISSES** the petition in G.R. No. 195105 for its lack of merit;

2. **GRANTS** the petition in G.R. No. 220729, and, **ACCORDINGLY, SETS ASIDE** COA Order of Execution 2015-174 dated August 6, 2015; and

3. **DECLARES** petitioners **DARLINA T. UY, LEONOR C. CLEOFAS, MA. LOURDES R. NAZ, JECELYN M. TOLEDO, LOIDA G. CEGUERRA,** and **MIRIAM S. FULGUERAS** not personally liable to refund the disallowed amounts.

No pronouncement on costs of suit.

**SO ORDERED.**

**LUCAS P. BERSAMIN**
Associate Justice

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[44] Section 21, MWSS Manual of Corporate Governance.
[45] See *rollo* (G.R. No. 220729), pp. 436-437.

**WE CONCUR:**

(ON LEAVE)
**MARIA LOURDES P. A. SERENO**
Chief Justice

**ANTONIO T. CARPIO**
Associate Justice
Acting Chief Justice

(ON OFFICIAL LEAVE)
**PRESBITERO J. VELASCO, JR.**
Associate Justice

**TERESITA J. LEONARDO DE CASTRO**
Associate Justice

**DIOSDADO M. PERALTA**
Associate Justice

**MARIANO C. DEL CASTILLO**
Associate Justice

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

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

(No Part)
**FRANCIS H. JARDELEZA**
Associate Justice

**ALFREDO BENJAMIN S. CAGUIOA**
Associate Justice

**SAMUEL R. MARTIRES**
Associate Justice

**NOEL GIMENEZ TIJAM**
Associate Justice

(ON OFFICIAL LEAVE)
**ANDRES B. REYES, JR.**
Associate Justice

**ALEXANDER G. GESMUNDO**
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's Division.

**ANTONIO T. CARPIO**
Acting Chief Justice

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