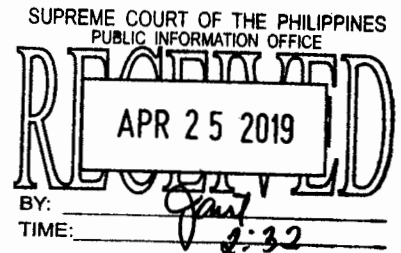




Republic of the Philippines  
Supreme Court  
Manila



EN BANC

ELAINE R. ABANTO, NINFA B.  
ABOTOTO, MAGTANGGOL P.  
AGUILA, MARIE PAZ F.  
AGUILA, MERLINDA V.  
ALCANTARA, REMEGIO S.  
AMAR, JOSEFINA A. AMPAT,  
ADRIAN E. ANCHETA, ANDRES  
P. ANDRADA, DANILO R.  
ANGELES, JOSEFINA P. ARCE,  
SALVACION G. ARZADON,  
JOEL F. ASCAÑO, MA.  
VICTORIA B. ASETRE, EMILIO  
I. BACCAY, JESUSA A.  
BALINGAO, GIL C. BANDILLA,  
LAURA G. BAQUIRAN, MARLAN  
G. BARBA, LOURDES M.  
BEAULAC, EDISON A.  
BELARMINO, RENE L.  
BELJERA, DALISAY D.  
BERNARDO, AUREO B.  
BILANGEL, JR.,<sup>i</sup> LUCIBAR G.  
BODO, MELBA GLORIA M.  
BUMA-AT, CLARA LANI G.  
CABABARO, BERNADETTE G.<sup>ii</sup>  
CABERTE, EVANGELINE J.  
CALUB, MA. ROSARIO P.  
CALUB, SONIA F. CASTEN, JOSE  
P. CASTRO, AIDA LINA D.  
CELINO, EMILY A. COLICO,  
TOBIAS V. COLINA,  
FRANCISCO R. CRUZ, LILEIZA  
A. CRUZ, LEROY A. CUEVAS,  
ANTONIO P. CUSTODIO,  
SYLVIA G. DACUAN, RITA M.  
DAGAL, ROSALIER B.  
DAGONDON, MARCELO S.

G.R. No. 207281

<sup>i</sup> Stated as "Aureo Jr. B. Bilangel" in the title of the Petition and Manifestation, *rollo* (G.R. No. 207281), pp. 3, 316. Substituted by his heirs Salvadora N. Bilangel, Judy Ann N Bilangel, Monica N. Bilangel, Charles N. Bilangel, and John N. Bilangel; see Notice of Death of Party and Substitution, *rollo* (G.R. No. 207281), Vol. 2, pp. 992-994.

<sup>ii</sup> Also stated as "C" in other parts of the *rollo*.

DANGCALAN,<sup>iii</sup> OFELIA C. DE  
GUZMAN, CARINA G. DELA  
CRUZ, ELIZABETH M. DELA  
PEÑA, RODOLFO T. DE LEON,  
DENNIS A. DINO, LETICIA N.  
DUCUSIN, FRED S. EDANIO,  
ROSABEL C. ESTEBAN,  
LEONORA A. FERNANDEZ,  
MARIETTA F. FERNANDEZ,  
ROSALIO G. FETALBO,  
ROGELIO C. FLORES,  
PURIFICACION G. FRONDOZO,  
MA. ANA B. FUENTES, MARIETA  
M. GARCIA, NUMIER T. GO,  
ROLANDO N. GORDOVEZ,  
ADELAIDA B. GUANZON,  
DOMINGO A. HABULAN,  
CECILIA S. HERMOSURA,  
CESAR M. JACOB, ESTRELLA E.  
ICASIANO, MA. LUZ L.  
JARDENIL, ANICETO K.  
JAVIER, JR.,<sup>iv</sup> ZENAIDA D. JOSE,  
RODELIO L. LABIT, CRISTINA  
V. LAFUENTE, JANNETTE G.  
LAGAREJOS, RUFO M.  
LEDESMA, LOURDES ANNE E.  
LIAO, ENRIQUETA A.  
LLORENTE, ALBERTO S.  
LOPEZ, LEDELINA B. LOVERES,  
JOSE R. LUMINATE, THELMA V.  
MACEDA, CLARITO L.<sup>v</sup>  
MAGSINO, CEFERINA C.  
MAKASIAR, NELSON D.  
MAKASIAR, AMORDELIZA C.  
MANAMTAM, DANILO A.  
MANAMTAM,<sup>vi</sup> LORNA S.  
MANLAPIG, AIDA D. MANZANO,  
GETULIO E. MARCOS,<sup>vii</sup>

<sup>iii</sup> Substituted by his heirs Jovencia T. Dangcalan, Joemar Tan Dangcalan, and Kim Tan Dangcalan; see Notice of Death of Party and Substitution, *rollo* (G.R. No. 210922), Vol. 2, pp. 978-981 and Manifestation Re: Notice of Death and Substitution for Petitioner Marcelo Sumiwan Dangcalan, *id.* at 986-988.

<sup>iv</sup> Also stated as "Aniceto Jr. K. Javier" in the title of the Petition and Manifestation, *rollo* (G.R. No. 207281), pp. 4, 317.

<sup>v</sup> Also stated as "D" in other parts of the *rollo*.

<sup>vi</sup> Substituted by his heirs Amordeliza C. Manamtam, Andrey Dan Manamtam, Aleeza Danice Manamtam, and Aldrich Dan Manamtam; see Notice of Death of Party and Substitution, *rollo* (G.R. No. 210922), Vol. 1, pp. 716-718 and Manifestation Re: Notice of Death for Petitioner Danilo Abisinia Manamtam, *rollo* (G.R. No. 210922), Vol. 2, pp. 973-977.

<sup>vii</sup> Substituted by his heirs Feliciano S. Marcos, Jefferson S. Marcos, Jenny Pearl S. Marcos, Christopher S. Marcos, and Roxanne S. Marcos; see Notice of Death of Party and Substitution with Manifestation, *rollo* (G.R. No. 207281), Vol. 1, pp. 753-758.



**JUANITA C. MATA, MARILOU S.  
 MATANGUIHAN, CAESAR M.  
 MATIGNAS, NATIVIDAD S.  
 MAUSISA, CONRADO P.  
 MEDINA, GREGORIO M. MICO,  
 JR.,<sup>viii</sup> EULINIA S. MORALES,  
 LILIAN O. MORALES,  
 GORGONIO T. MORA,  
 BERNARDINO E. OLAYVAR,  
 JR.,<sup>ix</sup> EDUARDO A. ONG, MARIA  
 LUISA J. PADILLA, CESAR A.  
 PADRIQUE, ROSARIO MELANIE  
 C. PAMA, SOTERO A. PINE, MA.  
 THERESA L. QUIRINO, AURORA  
 A. RADOMES, RICARDO O.  
 RAMIREZ, ADELA P. RARA,  
 EDUARDO E. REYES, AIDA A.  
 RIVERA, EDITHA P. RIVERA,  
 ANITA C. RIVERO, SUSAN V.  
 RODRIGUEZ, GIL A. ROMERO,  
 ARSENIO V. ROYALES V,<sup>x</sup>  
 ENRIQUE P. SADIE, DIANA T.  
 SANTIAGO, TERESITA S.  
 SANTIAGO, RICARDO P.  
 SANTILLAN,<sup>xi</sup> ALMA P. SANTOS,  
 DOROTHY C.<sup>xii</sup> SANTOS,  
 JUANITO C. SEBASTIAN,  
 IGNACIO C. SERRANO,  
 JOCELYN G. SIONGCO, MA.  
 BELLA L. SORIANO, THELMA C.  
 SUSTENTO,<sup>xiii</sup> RAUL T. TAASAN,  
 IMELDA L. TAGARAO, RODEL  
 C. TANIÑAS,<sup>xiv</sup> MA. LIBERTY C.  
 TEC, BENILDA A. TEJADA,  
 NENITA C. TENORIO, GRACE M.  
 TERTE, AME CRIS C. TOLEDO,  
 ERNESTO P. TORPIAS,  
 GRESELDA MARGARITA S.  
 TORRALBA, DANILO S.  
 VELORIA, ALMARIO SJ.**

<sup>viii</sup> Also stated as “Gregorio Jr. M. Mico” in the title of the Petition and Manifestation, *rollo* (G.R. No. 207281), pp. 4, 317.

<sup>ix</sup> Also stated as “Bernardino Jr. E. Olayvar” in the title of the Petition and Manifestation, *id.*

<sup>x</sup> Also stated as “Arsenio V.V. Royales” in the title of the Petition and Manifestation, *id.*

<sup>xi</sup> See Manifestation, *rollo* (G.R. No. 207281), Vol. 1, pp. 316-321.

<sup>xii</sup> Also stated as “D” in other parts of the *rollo*.

<sup>xiii</sup> Substituted by her heirs Joanna Chris C. Sustento and Julius Cezar C. Sustento; see Notice of Death of Party and Substitution, *rollo* (G.R. No. 210922), Vol. 1, pp. 692-695.

<sup>xiv</sup> Substituted by his heir Teresita D. Tanifias; see Notice of Death of Party and Substitution, *rollo* (G.R. No. 210922), Vol. 2, pp. 1033-1035.

**VENTURA, EUGENIO O. VERDE,  
 MA. ISABEL H. VERDE,  
 ANNABELLA T. VERGARA,  
 ALBERTO D. VILLARIN,  
 AURITA B. VILLOSO, and  
 DANIEL C. VINLUAN,**  
 Petitioners,

-versus-

**THE BOARD OF DIRECTORS  
 OF THE DEVELOPMENT BANK  
 OF THE PHILIPPINES, namely:  
 JOSE A. NUÑEZ, GIL  
 BUENAVENTURA, JUAN KEVIN  
 G. BELMONTE, DANIEL Y.  
 LAOGAN, ALBERTO A. LIM,  
 CECILIO B. LORENZO, and  
 JOSE LUIS L. VERA,**  
 Respondents.

**MARY IRMA D. LARA and  
 JOSEPHINE JAURIGUE,**  
 Petitioners-in-Intervention.

x-----x

**DEVELOPMENT BANK OF THE  
 PHILIPPINES,**  
 Petitioner,

**G.R. No. 210922**

Present:

BERSAMIN, C.J.,  
 CARPIO,  
 PERALTA,  
 DEL CASTILLO,  
 PERLAS-BERNABE,\*  
 LEONEN,  
 JARDELEZA,\*\*  
 CAGUIOA,  
 A. REYES, JR.,  
 GESMUNDO,  
 J. REYES, JR.,  
 HERNANDO, and  
 CARANDANG, JJ.

- versus -

**COMMISSION ON AUDIT,**  
 Respondent.

Promulgated:  
 March 5, 2019

x-----x

\* On official leave.  
 \*\* No part.

## DECISION

### CAGUIOA, J.:

Before the Court are two consolidated petitions relating to the validity of the Early Retirement Incentive Program (ERIP) IV-2010 of the Development Bank of the Philippines (DBP). **G.R. No. 207281** is a Petition for *Mandamus*<sup>1</sup> filed by 141 former DBP employees (petitioners-retirees) who retired under the ERIP IV-2010 against the DBP Board of Directors (DBP Board); while **G.R. No. 210922** is a Petition for *Certiorari*<sup>2</sup> with application for temporary restraining order (TRO) and/or writ of preliminary injunction filed by the DBP against the Commission on Audit (COA) questioning the Audit Observation Memorandum and the Notice of Disallowance issued by the latter over the ERIP IV-2006 and 2007.

### Factual Antecedents

#### *Background on the ERIP*

In 1999, the DBP Board approved DBP's Position Classification System and Compensation Plan. In line with this, the DBP Board adopted Resolution No. 0176<sup>3</sup> on June 6, 2003, which granted retirement benefits to qualified officials and employees through the ERIP IV for Calendar Years (CY) 2003 and 2008. The general objective of ERIP IV was to ensure the vitality of the bank for the next 10 years and make it attuned to the continuing advances in banking technology.<sup>4</sup>

Several ERIP Programs were approved and implemented prior to 2003, namely: ERIP I, ERIP II, and ERIP III from 1985 to 2002. ERIP IV was approved in 2003 (ERIP IV-2003), with a 10-year period implementation beginning 2003 until 2012 and an estimated budget outlay of around ₱1.7 Billion. It has two tranches: 2003-2008 and 2008-2012. Petitioners-retirees belong to the second tranche.<sup>5</sup>

On June 12, 2003, DBP Circular No. 15<sup>6</sup> was issued, providing the guidelines on the implementation of the ERIP IV for CY 2003 and 2008. Below are the relevant portions of said circular:

#### A. OBJECTIVES:

##### *General Objective*

The general objective of ERIP IV is to ensure the vitality of the Bank for the next ten (10) years and make it attuned to the continuing advances in banking technology.

<sup>1</sup> *Rollo* (G.R. No. 207281), Vol. 1, pp. 3-181, excluding Annexes.

<sup>2</sup> *Rollo* (G.R. No. 210922), Vol. 1, pp. 3-62, excluding Annexes.

<sup>3</sup> *Id.* at 75-81.

<sup>4</sup> *Rollo* (G.R. No. 207281), Vol. 1, pp. 8-9.

<sup>5</sup> *Id.* at 9.

<sup>6</sup> *Rollo* (G.R. No. 210922), Vol. 1, pp. 82-89.



*Specific Objectives*

The specific objectives are:

1. to infuse new talents/skills/insights into the Bank through the entry/promotion of younger corps of personnel via a Bank[-]wide succession program[;]
2. to enable the Bank to attain cost savings in its personnel budget[; and]
3. to create new opportunities for career advancement in the Bank.

**B. COVERAGE**

The ERIP IV shall be open to:

1. officials and employees aged 50 or above with at least 15 years of creditable government service as of the date of application[;]
2. other officials and employees identified by the Screening Committee who may be displaced as a consequence of realignment or streamlining of work processes, regardless of whether or not they meet the age and service requirements of #1 above. Management, through the Sector Heads, shall so advise said officials and employees in writing to apply immediately.<sup>7</sup>

*The Audit Observation Memorandum  
and the Notice of Disallowance*

On February 19, 2007, the COA, through its Supervising Auditor assigned in DBP, Atty. Hilconeda P. Abril (Atty. Abril), issued **AOM No. HO-HRM-ERIP-AOM-2006-03**<sup>8</sup> (AOM) which stated that DBP's ERIP IV-2003 was implemented contrary to the provision of Republic Act No. (R.A.) 8523.<sup>9</sup>

In the AOM, Atty. Abril recommended that DBP: (i) secure the approval of the Secretary of Finance; (ii) suspend, in the meantime, the implementation of ERIP IV; and (iii) require the recipients of ERIP IV to return the benefits received in excess of that allowed by DBP's gratuity plan.<sup>10</sup>

DBP filed its Reply to the AOM, arguing that Section 34<sup>11</sup> of Executive Order No. (E.O.) 81<sup>12</sup> or the Revised DBP Charter (DBP Charter) which

<sup>7</sup> Id. at 82.

<sup>8</sup> Id. at 91-94.

<sup>9</sup> Id. at 629. R.A. 8523 is entitled "AN ACT STRENGTHENING THE DEVELOPMENT BANK OF THE PHILIPPINES, AMENDING FOR THE PURPOSE EXECUTIVE ORDER NO. 81."

<sup>10</sup> Id. at 94 and 629.

<sup>11</sup> SEC. 34. *Separation Benefits.* — All those who shall retire from the service or are separated therefrom on account of the reorganization of the Bank under the provisions of this Charter shall be entitled to all gratuities and benefits provided for under existing laws and/or supplementary retirement plans adopted by and effective in the Bank: *Provided*, that any separation benefits and incentives which may be granted by the Bank subsequent to June 1, 1986, which may be in addition to those provided under existing laws and previous retirement programs of the Bank prior to the said date, for those personnel referred to in this section shall be funded by the National Government; *Provided, further*, that, any supplementary retirement plan adopted by the Bank after the effectivity of this Charter shall require the prior approval of the Minister of Finance.

<sup>12</sup> PROVIDING FOR THE 1986 REVISED CHARTER OF THE DEVELOPMENT BANK OF THE PHILIPPINES.

requires prior approval of the Secretary of Finance should be applied only to a supplementary retirement plan.<sup>13</sup>

Pursuant to the AOM, Atty. Abril issued **Notice of Disallowance No. ERIP-2006-007(03-06)**<sup>14</sup> (ND) dated May 17, 2007 which disallowed the payment of retirement benefits granted to DBP's officials and employees under ERIP IV-2003 for lack of approval from the Secretary of Finance and the President as required under Section 34 of the DBP Charter, as amended, and Section 3 of Memorandum Order No. 20 dated June 25, 2001 issued by the Office of the President. The ND further directed the persons named therein to settle immediately the aforesaid disallowance.<sup>15</sup>

*Proceedings before the COA, with material incidents within DBP*

Aggrieved by the issuance of the ND, DBP filed on October 9, 2007 a Notice of Appeal before the COA Office of the Corporate Auditor (OCA).<sup>16</sup>

Meanwhile, in a letter<sup>17</sup> dated March 16, 2007, the Department of Budget and Management (DBM) approved DBP's request to be exempted from the preparation of a Rationalization Plan under E.O. 366.<sup>18</sup>

Despite its initial objection to secure the approval from the authorizing officials, DBP nonetheless requested for the approval of the Secretary of Finance and confirmation by then President Gloria Macapagal-Arroyo (President Arroyo), which were favorably acted upon through letters dated January 14, 2009 and April 22, 2010, respectively. However, the COA argued that the President's approval was good for the period of up to June 30, 2010 only.<sup>19</sup>

On June 16, 2010, during the pendency of its appeal before the OCA, DBP approved the resumption of ERIP IV through **Board Resolution No. 0167**<sup>20</sup> (ERIP IV-2010).<sup>21</sup> Said Board Resolution provides that the application period for the ERIP IV-2010 shall be from the issuance of its implementing guidelines until December 31, 2011 and the effective date of retirement shall be no later than December 31, 2012.<sup>22</sup>

On July 9, 2010, DBP filed with COA's Cluster Director (where the appeal from the ND was pending) a Manifestation and Motion alleging that

<sup>13</sup> *Rollo* (G.R. No. 210922), Vol. 1, p. 629.

<sup>14</sup> *Id.* at 95-113.

<sup>15</sup> *Id.* at 629.

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

<sup>17</sup> *Id.* at 114.

<sup>18</sup> *Id.* at 629-630.

<sup>19</sup> *Id.* at 630.

<sup>20</sup> *Rollo* (G.R. No. 207281), Vol. 1, p. 214.

<sup>21</sup> *Rollo* (G.R. No. 210922), Vol. 1, p. 630.

<sup>22</sup> *Rollo* (G.R. No. 207281), Vol. 1, pp. 12, 214.



the disallowance on the ERIP IV-2003 has been rendered moot and academic by virtue of the approval and confirmation made by the Secretary of Finance and then President Arroyo.<sup>23</sup>

On November 12, 2010, DBP issued an Advisory<sup>24</sup> to all DBP employees informing them that per Board Resolution No. 0323, the deadline for the filing of applications under the ERIP IV-2010 was moved from December 31, 2011 to December 31, 2010. Consequently, petitioners-retirees, along with other DBP employees, heeded the invitation to avail of the retirement benefits under ERIP IV-2010.<sup>25</sup>

Meanwhile, in CGS-A Decision No. 005<sup>26</sup> (**CGS Decision**) dated December 28, 2010, the COA Corporate Government Sector (CGS) denied the appeal and affirmed the ND, ruling that DBP's ERIP IV-2003 violated Section 10 of R.A. 4968<sup>27</sup> or the *Teves Retirement Law*, which prohibits the creation of a supplementary retirement plan. Also, the CGS ruled that the President's approval was made within the election period, where the giving of salary or remuneration increase is prohibited under Section 261, Article XXII of Batas Pambansa Bilang 881 or the Omnibus Election Code.<sup>28</sup>

On February 17, 2011, DBP filed a petition for review<sup>29</sup> before the COA, seeking to reverse the CGS Decision on the following grounds: (i) DBP's right to due process was violated when the CGS cited additional grounds for the disallowance which were not mentioned in the ND; (ii) ERIP IV is not a supplementary retirement plan contemplated in R.A. 4968; (iii) DBP has the authority to fix the compensation, remuneration, and emoluments of its employees including the adoption of ERIP IV; and (iv) the employees and officers should not be ordered to refund the disallowed amount on account of good faith.<sup>30</sup>

Despite the disallowance of ERIP IV-2003, petitioners-retirees allege that their applications under ERIP IV-2010 were still approved by DBP beginning February 2, 2012 and confirmed by the DBP Board. According to them, DBP did not warn them of any possible setback on the ERIP program to allow the avalees to at least rethink their positions. Rather, they continued to offer the ERIP IV-2010 to DBP employees. They claim that DBP even invited the Government Service Insurance System (GSIS) to conduct seminars on retirement options and benefits despite their knowledge of the CGS Decision and the pendency of their appeal before the COA. Additionally, sometime in October 2012, DBP issued an advisory asking the ERIP IV-2010

<sup>23</sup> *Rollo* (G.R. No. 210922), Vol. 1, p. 630.

<sup>24</sup> *Rollo* (G.R. No. 207281), Vol. 1, p. 215.

<sup>25</sup> *Id.* at 12-13.

<sup>26</sup> *Rollo* (G.R. No. 210922), Vol. 1, pp. 180-187. Penned by Director IV Luz Loreto-Tolentino.

<sup>27</sup> AN ACT AMENDING FURTHER COMMONWEALTH ACT NUMBERED ONE HUNDRED AND EIGHTY-SIX, AS AMENDED; approved on June 17, 1967 and published on February 24, 1969.

<sup>28</sup> *Rollo* (G.R. No. 210922), Vol. 1, p. 630.

<sup>29</sup> *Id.* at 188-258.

<sup>30</sup> *Id.* at 64-65.



retirees to identify and train potential successors to their positions prior to the effectivity of their retirement.<sup>31</sup>

Subsequently, on January 30, 2013, the COA issued the assailed Decision No. 2013-046<sup>32</sup> (**COA Decision**), the dispositive portion of which states:

**WHEREFORE**, foregoing premises considered, the Petition is **DENIED** and COA CGS-A Decision No. 005 dated December 28, 2010 affirming ND No. ERIP-2006-007(03-06) dated May 17, 2007 on the payment of retirement benefits to DBP officials and employees in the total amount of P747,174,594.28 is hereby **AFFIRMED**.<sup>33</sup>

Meanwhile, in a letter dated February 14, 2013, the DBP Board informed the ERIP IV-2010 availees who retired effective December 31, 2012 (mostly under Board Resolution No. 0167 – the resumption of ERIP IV) that DBP had decided to hold in abeyance the final implementation of the ERIP IV pending the resolution of the ND.<sup>34</sup>

DBP filed a Motion for Reconsideration (MR) of the COA Decision, which was denied by the COA in a Resolution<sup>35</sup> dated December 6, 2013.<sup>36</sup>

In the interim, petitioners-retirees sent a demand letter on March 12, 2013 to Jose Nuñez (Mr. Nuñez), chairman of the Board, asking for immediate release of their benefits and informing the DBP Board that they are still open to negotiation in order to reach a peaceful settlement.<sup>37</sup>

On March 15, 2013, Mr. Nuñez and Gil Buenaventura (Mr. Buenaventura), a board member, sent individual letters to petitioners-retirees informing them that on March 1, 2013, DBP received a copy of the COA Decision affirming the disallowance of the ERIP IV-2003. The letters also informed them that DBP already prepared the Guidelines for the Return to Work of the ERIP IV-2010 retirees. In the letter, the following portion of the Opinion of the Civil Service Commission was quoted, to wit:

Therefore, in case the DBP decides not to move for the reconsideration of the COA Decision dated January 30, 2013, the same will attain finality and become executory. Verily, the DBP may already reinstate the ERIP IV availees to their former positions with payment of back salaries and other benefits including leave credits from the time they were separated from the service until their actual reinstatement. However, if the DBP moves for reconsideration of the COA decision, the reinstatement of the

<sup>31</sup> *Rollo* (G.R. No. 207281), Vol. 1, pp. 13-14.

<sup>32</sup> *Rollo* (G.R. No. 210922), Vol. 1, pp. 63-72. Decided by Chairperson Ma. Gracia M. Pulido-Tan, Commissioner Juanito G. Espino, Jr. and Commissioner Heidi L. Mendoza.

<sup>33</sup> *Id.* at 71-72.

<sup>34</sup> *Id.* at 15.

<sup>35</sup> *Id.* at 73-74.

<sup>36</sup> *Id.* at 631.

<sup>37</sup> *Rollo* (G.R. No. 207281), Vol. 1, p. 15.



affected employees will depend on the decision of the COA on the Motion for Reconsideration. x x x<sup>38</sup>

Essentially, petitioners-retirees were given two choices: (1) to return to work on the condition that they withdraw their ERIP IV-2010 application; or (2) to await the COA resolution on the MR that DBP then intended to file.<sup>39</sup>

On March 21, 2013, Mr. Nuñez sent a letter-reply to the demand letter where he reiterated his previous explanations as to the disallowance and claimed that DBP, “in exercising extraordinary due diligence in the handling of public funds [was] constrained not to release the ERIP IV[-2010] incentives.”<sup>40</sup> Then, as mentioned earlier, DBP filed on March 27, 2013 its MR of the COA Decision.<sup>41</sup>

On June 13, 2013, the petitioners-retirees filed the instant **Petition for Mandamus** against the DBP Board, praying for the release of their retirement benefits under ERIP IV-2010. Subsequently, on February 3, 2014, DBP filed the instant **Petition for Certiorari with application for TRO and/or Writ of Preliminary Injunction**, assailing the COA Decision.

### Petitions before the Court

#### *Petition for Mandamus*

In their Petition for *Mandamus*, petitioners-retirees argue that the DBP Board unlawfully neglected the release of their retirement benefits which the law specifically enjoins as their duty. They point out that there is no disallowance for ERIP IV-2010 as the COA Decision pertained to ERIP IV-2003 to 2008. They also argue that they have a vested right to the retirement benefits and it is the DBP Board’s ministerial duty to release the same after they have complied with all the requirements under the ERIP IV Guidelines. In addition, they aver that the DBP Board acted in bad faith when the latter retired them from their positions despite their knowledge of the Decision disallowing ERIP IV-2003. Lastly, they cite R.A. 10154,<sup>42</sup> which mandates that the highest priority should be given to the payment of retirement benefits of retiring government employees.<sup>43</sup>

On October 29, 2013, the DBP Board filed its Comment.<sup>44</sup> At the outset, it claims that petitioners-retirees are not entitled to the writ of *mandamus* for failing to show that they have a clear right to the ERIP IV benefits, in light of the

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<sup>38</sup> Id. at 16. Italics and underscoring omitted.

<sup>39</sup> Id. at 16-17.

<sup>40</sup> Id. at 17.

<sup>41</sup> Id. at 268-309, excluding Annexes.

<sup>42</sup> AN ACT REQUIRING ALL CONCERNED GOVERNMENT AGENCIES TO ENSURE THE EARLY RELEASE OF THE RETIREMENT PAY, PENSIONS, GRATUITIES, AND OTHER BENEFITS OF RETIRING GOVERNMENT EMPLOYEES.

<sup>43</sup> *Rollo* (G.R. No. 207281), Vol. 1, pp. 17-20.

<sup>44</sup> Id. at 354-393.



COA Decision which ruled against the validity of the entire ERIP IV Program. Moreover, *mandamus* does not lie because the act sought to be done is not ministerial. The DBP Board insists that it acted in accordance with their duty to exercise extraordinary diligence in their treatment of DBP's properties.<sup>45</sup>

On January 16, 2014, the petitioners-retirees filed their Reply<sup>46</sup> maintaining their entitlement to the writ of *mandamus* and reiterating their grounds raised in the petition.

### *Petition for Certiorari*

In its Petition for *Certiorari*, DBP claims that the COA gravely abused its discretion in denying its appeal on the ND. DBP maintains that the prohibition in the *Teves Retirement Law* does not preclude the adoption of an early retirement incentive plan. Moreover, DBP avers that the ERIP IV is not a supplementary retirement plan which is prohibited by the *Teves Retirement Law*. In any case, even if the ERIP IV were a supplementary retirement plan, DBP claims that no less than this Court, in the 2004 case of *DBP v. COA*,<sup>47</sup> held that the DBP Board has the authority under its charter to adopt a supplementary retirement plan. Finally, even assuming that the disbursements under ERIP IV were properly disallowed, DBP argues that the COA should have applied the prevailing jurisprudence that disallowed benefits received in good faith need not be refunded.<sup>48</sup>

Additionally, DBP repleads the same ground in its prayer for the issuance of a TRO and/or writ of preliminary injunction.<sup>49</sup>

On February 18, 2014, the Court issued a Resolution<sup>50</sup> which reads in part:

x x x Acting on the Petition x x x, the Court Resolved, without giving due course to the petition, to

(a) **REQUIRE** the respondent to **COMMENT** on the petition within ten (10) days from notice hereof; and

(b) **ISSUE** a **TEMPORARY RESTRAINING ORDER**, effective immediately and continuing until further orders from this Court, restraining the respondent from implementing assailed Decision No. 2013-046 dated January 30, 2013, Resolution dated December 6, 2013 and Notice of Disallowance No. ERIP-2006-007 (03-06) dated May 17, 2007 on petitioner's Early Retirement Incentive Program (ERIP) IV.<sup>51</sup>

On May 2, 2014, the COA filed its Comment<sup>52</sup> to the petition for *certiorari*, maintaining that the disallowance was proper because ERIP IV is

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<sup>45</sup> Id. at 367-368.

<sup>46</sup> Id. at 542-569.

<sup>47</sup> 467 Phil. 62 (2004).

<sup>48</sup> *Rollo* (G.R. No. 210922), Vol. 1, pp. 16-18.

<sup>49</sup> Id. at 56-57.

<sup>50</sup> Id. at 615-616.

<sup>51</sup> Id. at 615.

<sup>52</sup> Id. at 628-650.



a supplemental retirement plan proscribed by the *Teves Retirement Law*. It argues that the DBP Board does not have authority under its Charter to grant the ERIP IV, and even if it was authorized, it was still incumbent upon the Board to obtain prior approval by the Secretary of Finance. The COA also maintains that the payees are liable for the return of the disallowed benefits under the ERIP IV.

On August 20, 2014, DBP filed its Reply,<sup>53</sup> insisting that the ERIP IV is a valid early retirement plan and the fact that the ERIP IV is available to employees eligible to retire under the GSIS retirement laws is not inconsistent with an early retirement plan. This is because the nature and purpose of the program define whether it is an early retirement plan or a supplementary retirement plan. Additionally, DBP avers that the incentives granted under the ERIP IV are akin to the separation pay allowed by this Court in the case of *Betoy v. The Board of Directors, National Power Corporation*<sup>54</sup> (*Betoy*), and that such benefit in addition to retirement benefits does not amount to double compensation prohibited by the Constitution. DBP also argues that the authority granted by law to the DBP Board to define what constitutes as part of compensation relates to its independence and autonomy to design its own compensation plan. Assuming that the incentives are classified as “retirement benefits,” DBP invokes jurisprudence which provides that even retirement benefits received in good faith need not be refunded.<sup>55</sup>

Subsequently, the Court issued a Resolution<sup>56</sup> consolidating the two petitions.

On October 20, 2017, Mary Irma D. Lara and Josephine Jaurigue (petitioners-movants) filed a Motion for Inclusion<sup>57</sup> as petitioners to G.R. No. 207281. They claim that they are also retirees under the ERIP IV-2010 and are similarly situated as the petitioners-retirees. In its Comment<sup>58</sup> dated December 20, 2017, DBP interposed no objection to the motion filed by the petitioners-movants. This Comment was subsequently noted by the Court.<sup>59</sup>

### *Compromise Agreement*

On March 23, 2018, the petitioners-retirees<sup>60</sup> and DBP filed a Manifestation and Motion for Resolution with Joint Motion for Judgment Based on Compromise Agreement,<sup>61</sup> where they pray for:

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<sup>53</sup> Id. at 659-679.

<sup>54</sup> 674 Phil. 204 (2011).

<sup>55</sup> *Rollo* (G.R. No. 210922), Vol. 1, pp. 659-661.

<sup>56</sup> Id. at 652.

<sup>57</sup> *Rollo* (G.R. No. 210922), Vol. 2, pp. 964-970.

<sup>58</sup> Id. at 995-998.

<sup>59</sup> Id. at 1013-1014. Resolution dated January 30, 2018.

<sup>60</sup> Id. at 1021. Petitioners-movants Mary Irma D. Lara and Josephine Jaurigue also signed the Compromise Agreement with the following notation: “subject to a favorable resolution of their Motion for Inclusion as Petitioners to G.R. No. 207281 dated October 19, 2017.”

<sup>61</sup> Id. at 1015-1030, including Annexes.



1. The Honorable Court [to] resolve the consolidated cases G.R. Nos. 207281 and 210922; and

2. In the event of a decision in favor of DBP in G.R. No. 210922, the parties pray for the Honorable Court to approve the attached Compromise Agreement and that judgment be rendered in accordance therewith, without pronouncement as to the cost of suit.<sup>62</sup>

Based on the Compromise Agreement,<sup>63</sup> DBP has agreed to release to the petitioners-retirees the full amount of their benefits under ERIP IV-2010.

In the said Motion, the parties therein claimed that they referred the Compromise Agreement to COA Chairperson Michael G.<sup>64</sup> Aguinaldo, who wrote in a letter<sup>65</sup> dated July 14, 2017 that: “[c]onsidering that the issue on the propriety and/or legality of the disallowance on the retirement benefits under the ERIP is *litis pendentia*, this Commission deems it prudent to await the final decision of the Supreme Court on the case or on the proposed compromise agreement before taking any further action on [the] proposal.”<sup>66</sup>

### Issues

- 1) Whether COA gravely abused its discretion amounting to lack or excess of jurisdiction in disallowing the benefits under DBP’s ERIP IV-2003; and
- 2) Whether the petition for *mandamus* should be granted to compel the DBP Board to release the benefits under ERIP IV-2010.

### The Court’s Ruling

The Petition for *Certiorari* is granted, while judgment on the Petition for *Mandamus* shall be rendered based on the compromise agreement.

### *Classification of the ERIP*

Based on the submissions<sup>67</sup> of the parties before the Court, both DBP and COA have limited the issues on the legal basis for the disallowance of ERIP IV to the following threshold questions: whether the same is a supplementary retirement plan prohibited by the *Teves Retirement Law* and

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<sup>62</sup> Id. at 1016.

<sup>63</sup> Id. at 1021-1029.

<sup>64</sup> Also stated as “C” in the Manifestation and Motion for Resolution with Joint Motion for Judgment Based on Compromise Agreement and the Compromise Agreement, id. at 1016, 1024.

<sup>65</sup> *Rollo* (G.R. No. 210922), Vol. 2, p. 1030.

<sup>66</sup> Id.

<sup>67</sup> *Rollo* (G.R. No. 207281), Vol. 1, pp. 16-20 (DBP’s Petition); *rollo* (G.R. No. 210922), Vol. 1, pp. 632 (COA’s Comment) and 659-661 (DBP’s Reply); *rollo* (G.R. No. 210922), Vol. 2, pp. 755-756 (DBP’s Memorandum) and 912 (COA’s Memorandum).



whether the DBP Board is authorized to grant the same under its Charter. Hence, the Court shall likewise limit its evaluation on these grounds.

In order to properly classify ERIP IV, resort is made to DBP Circular No. 15 which contains the Guidelines on the Implementation of the ERIP IV for Calendar Years 2003 and 2008. For easier reference, the pertinent provisions are reproduced below:

#### **A. OBJECTIVES:**

##### *General Objective*

The general objective of ERIP IV is to **ensure the vitality of the Bank for the next ten (10) years** and make it attuned to the continuing advances in banking technology.

##### *Specific Objectives*

The specific objectives are:

1. to **infuse new talents/skills/insights** into the Bank through the entry/promotion of younger corps of personnel via a Bank[-]wide succession program[;]
2. to enable the Bank to attain **cost savings in its personnel budget**[; and]
3. to create **new opportunities for career advancement** in the Bank.

#### **B. COVERAGE**

The ERIP IV shall be open to:

1. officials and employees **aged 50 or above with at least 15 years of creditable government service** as of the date of application[; and]
2. other officials and employees identified by the Screening Committee **who may be displaced as a consequence of realignment or streamlining of work processes, regardless of whether or not they meet the age and service requirements of #1 above.** Management, through the Sector Heads, shall so advise said officials and employees in writing to apply immediately.

#### **C. ERIP IV INCENTIVES**

1. The basic incentive [is] computed as follows:

$$\frac{\text{Highest Basic Monthly Salary}}{\text{(As of date of application)}} \times \frac{1.50}{\text{(Factor)}} \times \text{Length of Gov't. Service in Gratuity Months}$$

x x x x

2. A service [a]ward of P4,000.00 per actual year of service in the government

3. **An additional incentive for avalees who choose to retire under RA 660<sup>68</sup> (Magic 87) computed as follows:**
  - a. Estimated retirement benefit under RA 1616<sup>69</sup>:  
  
Gratuity Estimate + Premium Refund Estimates (Personal share plus interest and government share without interest).
  - b. Less: Lump sum annuity (discounted amount) paid by GSIS under RA 660
  - c. Difference x 150%

x x x x

#### H. MISCELLANEOUS PROVISIONS

x x x x

2. The grant of ERIP IV incentives is **without prejudice to the retiree's entitlement to:**
  - a) **the regular retirement benefit under any of the existing GSIS retirement laws; and**
  - b) the payment of the **money value of leave credit (MVLC) balance, if any, under Bank policies.**<sup>70</sup>

When COA disallowed the ERIP IV-2003 on the finding that it was a supplementary retirement benefit prohibited under the *Teves Retirement Law*, it cited items C.3. and H.2. of DBP Circular No. 15 as mentioned above. The COA concluded that: “[t]he additional incentive given to the avalees constitutes additional or supplemental retirement benefits. Such incentive augments the benefits that a retiring employee would have received under the GSIS retirement laws.”<sup>71</sup>

In contrast, DBP argues that based on the objectives stated in the guidelines, the ERIP IV is not a supplementary retirement plan. According to DBP, “[t]he purpose of an early retirement incentive plan is to encourage, induce or motivate employees to voluntarily retire early on account of a reorganization or streamlining to achieve economy and efficiency. Meanwhile, a supplementary retirement plan x x x has for its purpose rewarding the employee for his loyalty and lengthy service in order to help him or her enjoy the remaining years of his life.”<sup>72</sup>

<sup>68</sup> AN ACT TO AMEND COMMONWEALTH ACT NUMBERED ONE HUNDRED AND EIGHTY-SIX ENTITLED ‘AN ACT TO CREATE AND ESTABLISH A GOVERNMENT SERVICE INSURANCE SYSTEM, TO PROVIDE FOR ITS ADMINISTRATION, AND TO APPROPRIATE THE NECESSARY FUNDS THEREFOR’ AND TO PROVIDE RETIREMENT INSURANCE AND FOR OTHER PURPOSES.

<sup>69</sup> AN ACT FURTHER AMENDING SECTION TWELVE OF COMMONWEALTH ACT NUMBERED ONE HUNDRED EIGHTY-SIX, AS AMENDED, BY PRESCRIBING TWO OTHER MODES OF RETIREMENT AND FOR OTHER PURPOSES.

<sup>70</sup> *Rollo* (G.R. No. 210922), Vol. 1, pp. 82-85. Additional emphasis supplied.

<sup>71</sup> *Id.* at 67.

<sup>72</sup> *Id.* at 25.

In this regard, the case of *GSIS v. COA*<sup>73</sup> is instructive. In that case, the COA disallowed GSIS' Employees Loyalty Incentive Plan, renamed as Retirement/Financial Plan (RFP), for violating the prohibition in the *Teves Retirement Law* on supplemental retirement schemes. Therein, the Court made the following pronouncements regarding early retirement incentive plans:

It is true that under Section 41(n) of Republic Act No. 8291, GSIS is expressly granted the power to adopt a retirement plan and/or financial assistance for its employees, but a closer look at the provision readily shows that this power is not absolute. It is qualified by the words "early," "incentive," and "for the purpose of retirement." The retirement plan must be an **early retirement incentive plan** and such early retirement incentive plan or financial assistance must be for the purpose of retirement.

According to Webster's Third New International Dictionary, "**early**" means "occurring before the expected or usual time," while "**incentive**" means "serving to encourage, rouse, or move to action," or "something that constitutes a motive or spur."

It is clear from the foregoing that Section 41(n) of Republic Act No. 8291 contemplates a situation wherein GSIS, **due to a reorganization, a streamlining of its organization, or some other circumstance, which calls for the termination of some of its employees, must design a plan to encourage, induce, or motivate these employees, who are not yet qualified for either optional or compulsory retirement under our laws, to instead voluntarily retire. This is the very reason why under the law, the retirement plan to be adopted is in reality an incentive scheme to encourage the employees to retire before their retirement age.**<sup>74</sup>

As can be deduced from above, in determining whether a retirement plan is indeed an early retirement incentive plan (as opposed to a prohibited supplementary retirement plan), the primary consideration is the objective.

In *GSIS v. COA*, the objective of the RFP was "[t]o motivate and reward employees for meritorious, faithful, and satisfactory service."<sup>75</sup> The Court ruled that its purpose was not to encourage GSIS' employees to retire before the retirement age, but to augment the benefits they would receive.<sup>76</sup>

In stark contrast, the general objective of DBP's ERIP IV is to "ensure the vitality of the Bank for the next ten (10) years and make it attuned to the continuing advances in banking technology."<sup>77</sup> Specifically, the purposes of the ERIP IV are to: (1) infuse new talents/skills/insights into the Bank through the entry/promotion of younger corps of personnel; (2) enable the Bank to attain cost savings in its personnel budget; and (3) create new opportunities for career advancement in the Bank.<sup>78</sup>

<sup>73</sup> 674 Phil. 578 (2011).

<sup>74</sup> Id. at 600. Emphasis and underscoring supplied; emphasis in the original omitted.

<sup>75</sup> Id. at 584, 601.

<sup>76</sup> Id. at 601.

<sup>77</sup> *Rollo* (G.R. No. 210922), Vol. 1, p. 82.

<sup>78</sup> Id.



Thus, judging from the stated objectives of the ERIP IV, the same should be considered as an early retirement incentive plan and not a supplemental retirement plan.

However, in the same case of *GSIS v. COA*, which the COA cites in the instant petition,<sup>79</sup> the Court made a pronouncement that in addition to being based on a reorganization, a valid early retirement incentive plan must *not* be offered to employees who are already qualified to retire, either optionally or compulsorily.<sup>80</sup> To note, under R.A. 8291 or the *GSIS Act*, the employees qualified to retire are those who have rendered at least 15 years of service and is, upon retirement, at least 60 years old (for voluntary retirement) or 65 years old (for compulsory retirement).<sup>81</sup>

It should be noted that the assailed retirement plan in *GSIS v. COA* is not on all fours with ERIP IV. The Implementing Policies of the **GSIS RFP** states that “[t]o be entitled to the plan, the employee must be qualified to retire with 5[-]year lump sum under RA 660 or RA 8291 or had previously retired under applicable retirement laws.”<sup>82</sup> Read with its stated objective of motivating and rewarding employees for meritorious, faithful, and satisfactory service,<sup>83</sup> the GSIS RFP was undoubtedly a supplementary retirement plan. It cannot be considered as an early retirement incentive plan because the *only* employees entitled thereto are those already qualified to retire or had previously retired — no reorganization or streamlining is involved. As the Court held therein:

x x x [The GSIS RFP’s] **very objective**, “[t]o motivate and reward employees for meritorious, faithful, and satisfactory service,” **contradicts the nature of an early retirement incentive plan, or a financial assistance plan, which involves a substantial amount that is given to motivate employees to retire early. Instead, it falls exactly within the purpose of a retirement benefit, which is a form of reward for an employee’s loyalty and lengthy service, in order to help him or her enjoy the remaining years of his life.**

Furthermore, **to be able to apply for the GSIS RFP, one must be qualified to retire under Republic Act No. 660 or Republic Act No. 8291, or must have previously retired under our existing retirement laws.** This only means that the employees covered by the GSIS RFP were those who were already eligible to retire or had already retired. **Certainly,**

<sup>79</sup> Id. at 635-636.

<sup>80</sup> See *GSIS v. COA*, supra note 73, at 604.

<sup>81</sup> SEC. 13. *Retirement Benefits.* — x x x

x x x x

(b) Unless the service is extended by appropriate authorities, retirement shall be compulsory for an employee at sixty-five (65) years of age with at least fifteen (15) years of service: *Provided*, That if he has less than fifteen (15) years of service, he may be allowed to continue in the service in accordance with existing civil service rules and regulations.

SEC. 13-A. *Conditions for Entitlement.* — A member who retires from the service shall be entitled to the benefits enumerated in paragraph (a) of Section 13 hereof: *Provided*, That:

(1) he has rendered at least fifteen (15) years of service;

(2) he is at least sixty (60) years of age at the time of retirement; and

(3) he is not receiving a monthly pension benefit from permanent total disability.

<sup>82</sup> *GSIS v. COA*, supra note 73, at 585. Underscoring supplied.

<sup>83</sup> Id. at 584.

**this is not included in the scope of “an early retirement incentive plan or financial assistance for the purpose of retirement.”**

The fact that GSIS **changed the name** from “Employees Loyalty Incentive Plan” to “Retirement/Financial Plan” does not change its essential nature. A perusal of the plan shows that its **purpose is not to encourage GSIS’s employees to retire before their retirement age, but to augment the retirement benefits they would receive under our present laws.** Without a doubt, the GSIS RFP is a supplementary retirement plan, which is prohibited by the Teves Retirement Law.<sup>84</sup>

In contrast, **DBP’s ERIP IV** is not limited to employees who are qualified to retire or those who have previously retired. Rather, it is open to (1) officials and employees aged 50 or above with at least 15 years of service; and (2) others who may be displaced as a consequence of realignment or streamlining of work processes, regardless of their age or years of service.<sup>85</sup> Coupled with its general objective of reorganization and streamlining, it can be concluded that ERIP IV still falls within the definition of an early retirement incentive plan. The fact that those who are qualified to retire may also be covered does not negate its classification as an early retirement incentive plan. Again, the primary consideration should be the purpose of the plan. Hence, there is merit in the following averments made by DBP:

Clearly, an employee who is as young as 50 years old but has served 15 years in the government may avail of the ERIP IV. When the employee leaves the Bank, he is not yet qualified to receive the retirement benefits offered by GSIS. Under R.A. No. 8291, to qualify for retirement, the employee must, not only have rendered at least 15 years of service, he must also be at least 60 years of age upon retirement.

In fact, **for the avalees of the ERIP IV in the years 2003-2006, i.e., those covered by the Notice of Disallowance, 335 were not yet qualified to retire under the GSIS,** 117 of whom are aged 50 years old and below.

X X X X

It is elementary to state that **unless one is compelled to retire by reason of *compulsory retirement*, the decision to retire and when to retire rest[s] in the employee concerned.** He or she may continue to work until the law requires him to leave government service.

**Even assuming for argument’s sake that a few, some[,] or all of the avalees of the ERIP IV are eligible to retire under GSIS retirement laws, it does not change the fact that ERIP IV was adopted and implemented to induce them to retire early which otherwise they would not have decided to [do] if they were not offered the incentives.**

Unlike under compulsory retirement, **the decision to retire under the ERIP IV was voluntary on the part of the employees who were aware that, more than the incentives to be received, their action would promote the objectives that DBP sought to achieve** — streamlining, cost-savings, and infusion of young blood.

<sup>84</sup> *GSIS v. COA*, supra note 73, at 601. Emphasis and underscoring supplied; emphasis in the original omitted.

<sup>85</sup> *Rollo* (G.R. No. 210922), Vol. 1, p. 82.

x x x [T]he ERIP IV induced the employees by way of incentives to retire before they were required to retire compulsorily, i.e., before their expected or usual time for retirement. Indeed, a 55-year old ERIP IV avalee could work ten (10) more years in DBP and the latter cannot command him to retire before that time.

Contrary to COA's assertion, **the fact that ERIP IV is available to employees eligible to retire under the GSIS retirement laws is not inconsistent with the nature of an early retirement plan.** If the ERIP IV's purpose is to encourage DBP employees to retire under GSIS laws earlier than they would have been compelled to in order to achieve DBP's purpose of cost savings and allow the infusion of "young blood", then it is, in fact, an early retirement plan.<sup>86</sup>

Still, the COA insists that the ERIP IV violates the *Teves Retirement Law* by increasing the benefits of retiring employees beyond what is allowed under the GSIS retirement laws. According to the COA, the fact that retirees would be entitled to the regular benefits under GSIS laws, on top of what they would receive under ERIP IV, clearly constitutes supplementary retirement benefits, which is a form of double compensation.<sup>87</sup> DBP counters that ERIP IV is in the form of a separation pay resulting from a reorganization; hence, the avalees are not precluded from claiming benefits under existing retirement laws despite receiving benefits from the ERIP IV.<sup>88</sup>

DBP's averments are not novel. There have already been cases decided by the Court wherein it was held that those who avail of early retirement incentive plans may still avail of benefits under existing retirement laws. Said cases have also recognized the benefits under an early retirement incentive plan as a form of separation pay.

In *Laraño v. COA*<sup>89</sup> (*Laraño*) the COA denied the claim for retirement benefits under R.A. 1616 of petitioners-retirees from the Metropolitan Waterworks and Sewerage System (MWSS) after they had received their benefits under MWSS' Revised Early Retirement Incentive Package (Revised ERIP). The Court partially reversed the COA, ruling that petitioners who were affected by the reorganization of MWSS and qualified to retire under R.A. 1616 are entitled to receive their retirement benefits thereunder, notwithstanding their receipt of benefits under the Revised ERIP of MWSS.<sup>90</sup>

The pronouncement in *Laraño* had been affirmed in the subsequent case of *Herrera v. National Power Corporation*,<sup>91</sup> where the Court also classified the MWSS' Revised ERIP as a form of separation pay, to wit:

<sup>86</sup> *Rollo* (G.R. No. 210922), Vol. 2, pp. 769-771. Emphasis and underscoring supplied; emphasis and underscoring in the original omitted.

<sup>87</sup> *Rollo* (G.R. No. 210922), Vol. 1, p. 637.

<sup>88</sup> See *id.* at 22-24.

<sup>89</sup> 565 Phil. 271 (2007).

<sup>90</sup> *Id.* at 290, 291.

<sup>91</sup> 623 Phil. 383 (2009).

We are, of course, aware that in *Laraño v. Commission on Audit*, we held that **employees, who were separated from the service because of the reorganization** of the [MWSS] and Local Waterworks and Utilities Administration (LWUA) pursuant to RA No. 8041, **were entitled to both a separation package and retirement benefits.**

In *Laraño*, however, the **Early Retirement Incentive Plan** submitted to and approved by then President Fidel V. Ramos **explicitly provided for a separation package that would be given over and above the existing retirement benefits.** Therein lies the fundamental difference. Hence, unlike in this case, there was specific authority for the grant of both separation pay and retirement benefits.<sup>92</sup>

Further, in *Betoy*, the Court explained that the receipt of retirement benefits does not bar the retiree from receiving separation pay, stating that “a separation pay at the time of the reorganization of the [National Power Corporation] and retirement benefits at the appropriate future time are two separate and distinct entitlements.”<sup>93</sup> The Court therein clarified that entitlement of qualified employees to receive separation pay *and* retirement benefits is not covered by the Constitutional proscription on double compensation.<sup>94</sup> This is because separation pay and retirement benefits are different entitlements as they have different *legal bases*, different *sources of funds*, and different *intents*.<sup>95</sup>

As applied to the instant case, the ERIP IV partakes the form of a separation pay in that it is given to employees who are affected by the reorganization and streamlining of DBP. To recall, separation pay is given to an employee in cases under Articles 298<sup>96</sup> and 299<sup>97</sup> of the Labor Code. Specifically, these involve the installation of labor-saving devices, redundancy, retrenchment to prevent losses, closing or cessation of operation of establishment, or in case the employee suffers from a disease such that his continued employment is prohibited by law.<sup>98</sup> By analogy, the objective of

<sup>92</sup> Id. at 402. Emphasis and underscoring supplied; emphasis and underscoring in original omitted.

<sup>93</sup> Supra note 54, at 251-252.

<sup>94</sup> Id. at 253.

<sup>95</sup> Id. at 255.

<sup>96</sup> ART. 298. [283] *Closure of Establishment and Reduction of Personnel*. — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

<sup>97</sup> ART. 299. [284] *Disease as Ground for Termination*. — An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: *Provided*, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

<sup>98</sup> *Arc-Men Food Industries Corp. v. NLRC*, 436 Phil. 371, 380-381 (2002).

ERIP IV is similar to those grounds for termination under Article 298 of the Labor Code on *Closure of Establishment and Reduction of Personnel*.

To reiterate, retirement benefits and separation pay are not mutually exclusive. “*Retirement benefits* are a form of reward for an employee’s loyalty and service to an employer and are earned under existing laws, CBAs, employment contracts and company policies. On the other hand, *separation pay* is that amount which an employee receives at the time of his severance from employment, designed to provide the employee with the wherewithal during the period that he is looking for another employment and is recoverable only in instances enumerated under Articles 283 and 284 of the Labor Code or in illegal dismissal cases when reinstatement is not feasible.”<sup>99</sup>

Thus, considering that the ERIP IV is analogous to separation pay, then the grant of benefits under it along with the grant of benefits under other retirement laws should not be considered as a form of double compensation.

#### *Authority of the DBP Board*

Despite the foregoing pronouncements, even if the Court were to classify the ERIP IV not as a valid early retirement incentive plan but as a prohibited supplementary retirement plan, the same should not have been disallowed by the COA on the basis of the *Teves Retirement Law*. This has already been settled in *DBP v. COA*, the relevant portions of which are quoted below:

**Even assuming**, however, that the [DBP’s Special Loan Program (SLP)] **constitutes a supplementary retirement plan**, RA 4968 [or **the Teves Retirement Law**] **does not apply** to the case at bar. **The DBP Charter, which took effect on 14 February 1986, expressly authorizes supplementary retirement plans “adopted by and effective in” DBP,** thus:

SEC. 34. *Separation Benefits*. — **All those who shall retire** from the service or are separated therefrom on account of the reorganization of the Bank under the provisions of this Charter **shall be entitled to all gratuities and benefits provided for under existing laws and/or supplementary retirement plans adopted by and effective in the Bank:** Provided, that any separation benefits and incentives which may be granted by the Bank subsequent to June 1, 1986, which may be in addition to those provided under existing laws and previous retirement programs of the Bank prior to the said date, for those personnel referred to in this section shall be funded by the National Government; **Provided, further, that, any supplementary retirement plan adopted by the Bank after the effectivity of this Chapter shall require the prior approval of the Minister of Finance.**

<sup>99</sup> *Goodyear Philippines, Inc. v. Angus*, 746 Phil. 668, 681 (2014). Italics supplied.



x x x x

SEC. 37. *Repealing Clause*. — All acts, executive orders, administrative orders, proclamations, rules and regulations or parts thereof inconsistent with any of the provisions of this charter are hereby repealed or modified accordingly. (Italics supplied)

**Being a *special and later law*, the DBP Charter prevails over RA 4968.** The DBP originally adopted the SLP in 1983. **The Court cannot strike down the SLP now based on RA 4968 in view of the subsequent DBP Charter authorizing the SLP.**<sup>100</sup>

Despite this ruling, the COA insists that the *Teves Retirement Law* still applies to DBP, citing the following pronouncements in *GSIS v. COA*:

x x x unless the intention to revoke is clear and manifest, the abrogation or repeal of a law cannot be assumed. The repealing clause contained in Republic Act No. 8291 is not an express repealing clause because it fails to identify or designate the statutes that are intended to be repealed. It is actually a clause, which predicated the intended repeal upon the condition that a substantial conflict must be found in existing and prior laws.

Since Republic Act No. 8291 made no express repeal or abrogation of the provisions of Commonwealth Act No. 186 as amended by the *Teves Retirement Law*, the reliance of the petitioners on its general repealing clause is erroneous. The failure to add a specific repealing clause in Republic Act No. 8291 indicates that the intent was not to repeal any existing law, unless an irreconcilable inconsistency and repugnancy exists in the terms of the new and old law[s].<sup>101</sup>

The contention is without merit.

In the quoted portion itself, it states that “[t]he failure to add a specific repealing clause x x x indicates that the intent was not to repeal any existing law, unless an irreconcilable inconsistency and repugnancy exists in the terms of the new and old laws.”<sup>102</sup> Hence, while implied repeals are indeed disfavored, such would still occur if two laws are clearly irreconcilable and inconsistent.

In the instant case, there is an irreconcilable inconsistency between the *Teves Retirement Law* and the DBP Charter because while the former prohibits supplementary retirement plans, the latter expressly authorizes supplementary retirement plans. As unequivocally held in *DBP v. COA*, the DBP Charter prevails over the *Teves Retirement Law* not only because it is a later law but also because it is a special law. To recall, it is a rule in statutory construction that a special law prevails over a general law, regardless of the laws’ respective dates of passage.<sup>103</sup>

<sup>100</sup> *DBP v. COA*, supra note 47, at 82-83. Additional emphasis and underscoring supplied.

<sup>101</sup> *Rollo* (G.R. No. 207281), Vol. 1, p. 258, citing *GSIS v. COA*, supra note 73, at 598. Emphasis in the original omitted.

<sup>102</sup> *GSIS v. COA*, id. Underscoring supplied.

<sup>103</sup> *De Lima v. Guerrero*, G.R. No. 229781, October 10, 2017, 843 SCRA 1, 160.

Thus, based on the DBP Charter, the Board is authorized to provide a supplementary retirement plan. However, such authority is by no means unbridled. The Charter also states that there should be a prior approval by the Secretary of Finance. In this regard, the COA argues that even assuming that the DBP Board is authorized by its Charter to implement supplementary retirement benefits, the disallowance of ERIP IV is still proper in view of the absence of prior approval by the Secretary of Finance.

The COA is correct in saying that the prior approval of the Secretary of Finance is necessary for the validity of DBP's supplementary retirement plan. Nevertheless, it is already held that ERIP IV is not a supplementary retirement plan. Hence, the prior approval of the Secretary of Finance is not necessary.

In this regard, it is worthy to mention that as a result of the ND, DBP indeed sought approval of ERIP IV from the Secretary of Finance. In a letter<sup>104</sup> dated January 14, 2009 addressed to the DBP President, the Secretary of Finance himself opined that the requirement of prior approval by the Department of Finance is inapplicable. Still, the Secretary of Finance went on to state that:

In any event, in our exercise of administrative supervision over DBP, **we evaluated the subject ERIPs, and found the same to be factually and legally proper and in order.** We believe that the **authority of the DBP to adopt, approve and implement the ERIPs is clearly provided for** by Section 13, in relation to Section 9(a) of its Charter. Accordingly, this **Department interposes no objection** to the adoption, approval and implementation of the subject ERIPs by the DBP Board.<sup>105</sup>

Additionally, DBP also sent a letter<sup>106</sup> to then President Arroyo to seek confirmation of the DBP Board's authority to approve a compensation plan for its personnel. The letter contains the following portions of Board Resolution No. 0045, which was approved by the President:

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

X X X X

4) **Implementation of DBP's Early Retirement Incentive Program (ERIP)**, the adoption and implementation of which has been **recognized by the DBM** as compliance with the government's rationalization plan as mandated by Executive Order No. 366 **and**

<sup>104</sup> *Rollo* (G.R. No. 210922), Vol. 1, p. 115.

<sup>105</sup> *Id.* Emphasis and underscoring supplied.

<sup>106</sup> *Id.* at 178-179.

by the Department of Finance as within the DBP Board's authority  
x x x[.]<sup>107</sup>

The above-mentioned DBM recognition pertains to DBP's request for consideration of its rehabilitation program and organization refinements as substantial compliance to E.O. 366 or the *Strategic Review of the Operations and Organizations of the Executive Branch*. This request was granted through a letter<sup>108</sup> from the DBM dated March 16, 2007 which states in part:

x x x the Bank's streamlined structure, staffing pattern, and work procedures have contributed to the improvement of service delivery and growth of net income and total assets.

**We recognize that the Bank's periodic and continuing efforts at an internal reorganization, together with a special separation package, has helped maintain its competitive position and good financial standing in the banking industry.**

Foregoing considered, your request is hereby approved and DBP may be exempted from the preparation of a Rationalization Plan under EO 366.<sup>109</sup>

In sum, DBP is authorized by its Charter to provide a supplementary retirement plan, subject to the prior approval of the Secretary of Finance. Nonetheless, since ERIP IV is not a supplementary retirement plan, prior approval by the Secretary of Finance is not necessary. Its absence, therefore, cannot invalidate ERIP IV. In any event, it is clear from the foregoing that the Secretary of Finance, through his own study and evaluation of the ERIP IV, interposed no objection "to the adoption, approval and implementation of the subject ERIPs by the DBP Board" as they were found "to be factually and legally proper and in order" as "clearly provided for by Section 13, in relation to Section 9(a)" of DBP's Charter.<sup>110</sup>

Thus, the ineluctable conclusion is that COA erred in disallowing the benefits under ERIP IV-2003.

*On the Petition for Mandamus and the  
Compromise Agreement*

As regards the Petition for *Mandamus*, the Court clarifies that what is involved is ERIP IV-2010, not ERIP IV-2003 which is the subject of the Petition for *Certiorari*. In the former petition, the petitioners-retirees pray for the issuance of a writ of *mandamus* to compel the DBP Board to release their benefits under ERIP IV-2010. To recall, DBP held in abeyance the final implementation of ERIP IV-2010 pending the resolution of the ND over ERIP IV-2003.<sup>111</sup>

<sup>107</sup> Id. Emphasis and underscoring supplied; italics omitted.

<sup>108</sup> Id. at 114.

<sup>109</sup> Id.

<sup>110</sup> Id. at 115.

<sup>111</sup> See *rollo* (G.R. No. 207281), Vol. 1, p. 15.



Petitioners-retirees claim that that they have established a clear right to the incentives under ERIP IV-2010. According to them, the DBP Board unlawfully neglected or refused to perform their duties under the ERIP IV-2010 and R.A. 10154.<sup>112</sup>

Petitioners-retirees also harp on the fact that ERIP IV-2010 was not disallowed by the COA. They insist that the disallowance for ERIP IV-2003 will not affect the validity of ERIP IV-2010 and DBP cannot use such disallowance as basis for refusing the release of retirement incentives to them.<sup>113</sup>

For their part, the DBP Board maintains that petitioners-retirees have not shown a well-defined, clear, and certain right to warrant the grant of benefits under ERIP IV-2010 in light of the COA's disallowance of the entire ERIP IV program. Moreover, the act sought by petitioners-retirees to be done is not ministerial and the DBP Board cannot be compelled by *mandamus* to release the benefits. At any rate, the DBP Board claims that they acted in accordance with their duty to exercise extraordinary diligence in their treatment of DBP's properties.<sup>114</sup>

However, the Court notes that DBP and the petitioners-retirees including the petitioners-movants<sup>115</sup> have entered into a Compromise Agreement sometime in February 2018,<sup>116</sup> which is reproduced below:

#### COMPROMISE AGREEMENT

##### KNOW ALL MEN BY THESE PRESENTS:

This Compromise Agreement made and entered into this \_\_\_ day of \_\_\_\_\_ 2018, in Makati City, by and between:

**THE CY 2011-2012 RETIREES OF THE DEVELOPMENT BANK OF THE PHILIPPINES UNDER ITS EARLY RETIREMENT INCENTIVE PROGRAM-IV** who are the petitioners of SC-G.R. SP. NO. 207281, entitled "Elaine R. Abanto, et al. vs. The Board of Directors of the Development Bank of the Philippines", represented herein by their attorney-in-fact, Atty. Howard M. Calleja, hereinafter referred to as the "Petitioning ERIP-IV Retirees";

-- and --

**DEVELOPMENT BANK OF THE PHILIPPINES**, a government financial institution duly organized, existing and operating pursuant to Executive Order No. 81, as amended by Republic Act No. 8523, otherwise known as the

<sup>112</sup> *Rollo* (G.R. No. 210922), Vol. 2, pp. 867-868.

<sup>113</sup> *Id.* at 841.

<sup>114</sup> *Id.* at 889-899.

<sup>115</sup> *Rollo* (G.R. No. 207281), Vol. 2, pp. 1001-1002. Subject to a favorable resolution of their Motion for Inclusion as Petitioners to G.R. No. 207281 dated October 19, 2017.

<sup>116</sup> *Rollo* (G.R. No. 210922), Vol. 2, p. 1065. Actual date not stated in the *rollo*.

1986 Revised Charter of the DBP, with principal office at DBP Building, Sen. Gil J. Puyat Avenue corner Makati Avenue, Makati City, represented herein by its President and CEO Cecilia C. Borromeo, hereinafter referred to as "DBP";

**WITNESSETH: That –**

WHEREAS, the petitioning ERIP-IV Retirees retired from DBP under its ERIP-IV Program in CY 2011-2012.

WHEREAS, in 2013 DBP suspended the implementation of the ERIP-IV Program and did not release the early retirement incentives of the petitioning ERIP-IV Retirees due to, among others, the issuance by the Commission on Audit (COA) of a Notice of Disallowance calling into question the validity and legality of the entire ERIP-IV Program.

WHEREAS, in order to compel the release of the retirement incentives, the petitioning ERIP-IV Retirees filed a mandamus petition before the Supreme Court docketed as G.R. No. 207821, entitled "*Elaine R. Abanto, et al. vs. The Board of Director of DBP.*" This petition has been pending since 20 June 2013, and in that time some of the petitioners have already passed away and are now represented by their respective heirs, while the majority who are now senior citizens – some of whom are suffering from various illnesses – have limited opportunities for productive employment and are still waiting for the release of their retirement incentives.

WHEREAS, COA's declaration of invalidity of DBP's ERIP-IV Program is the subject of DBP's Petition for Review on Certiorari docketed as G.R. No. 210922, entitled "*Development Bank of the Philippines vs. Commission on Audit*", which is consolidated with the above-described mandamus petition. In an Order dated 18 February 2014, the Honorable Supreme Court issued a Temporary Restraining Order enjoining COA from implementing its assailed decision against DBP's ERIP-IV Program.

WHEREAS, DBP's adoption and implementation of its ERIP-IV Program has been repeatedly approved/confirmed and acknowledged as valid and legal by the Executive Department, as shown under a letter dated 16 March 2007 issued by the Department of Budget and Management (DBM), a letter dated 14 January 2009 by the Secretary of Finance, and by the 22 April 2010 confirmation by President Gloria Macapagal-Arroyo.

WHEREAS, the President of the Philippines on 22 March 2016 issued Executive Order No. 203 series of 2016 [*Adopting a Compensation and Position Classification System (CPCS) and a General Index of Occupational Services (IOS) for the GOCC Sector Covered by Republic Acts No. 10149 and For Other Purposes*] which, among others, provides for an early retirement incentive plan for government employees and early retirement incentives in addition to retirement benefits under existing laws.

WHEREAS, E.O. 203 series of 2016 is an explicit recognition by the Executive Department that an early retirement incentive plan providing additional retirement incentives is not invalid *per se* and is not repugnant to law, morals, good customs, public order, or public policy.

WHEREAS, E.O. 203 series of 2016 supports the position that DBP's ERIP-IV Program is valid and legal by and of itself, in addition to it already having the stamp of approval of the DBM, Secretary of Finance and President of the Philippines.



WHEREAS, retirement benefits serve a humanitarian purpose of providing for the sustenance and, hopefully, even comfort, of retirees when they no longer have the stamina or capability to earn a livelihood.

WHEREAS, considering that ERIP-IV is a retirement program repeatedly approved and acknowledged as valid by Executive *fiat*, most recently through Executive (sic) E.O. 203 series of 2016, and in view of the policy favoring the liberal interpretation of retirement laws in favor of those who are intended to be benefited, and for humanitarian grounds considering the advanced age of the petitioning ERIP-IV Retirees, and in order to put an end to their litigation in G.R. No. 207281, DBP, through its current Board of Directors, has agreed to release the ERIP-IV incentives of the petitioning ERIP-IV Retirees, subject to the prior approval of this Compromise Agreement by the Supreme Court.

WHEREAS, DBP President and CEO Cecilia C. Borromeo was duly authorized under Resolution No. 0074 series of 2017 to enter into and sign this Compromise Agreement; and the following terms and conditions of compromise are in line with the instructions given by the DBP Board of Directors in Resolution No. 0282 series of 2017.

WHEREAS, in a letter dated 14 July 2017, COA through its Chairperson Michael C. Aguinaldo, said that “[c]onsidering that the issue on the propriety and/or legality of the disallowance on the retirement benefits under the ERIP is *litis pendentia*, this Commission deems it prudent to await the final decision of the Supreme Court on the case **or on the proposed compromise agreement before taking any further action on (the) proposal.**”

NOW THEREFORE, for and in consideration of the foregoing, and the covenants hereinafter provided, the parties agree as follows:

1. Upon the execution of this Agreement, the parties shall submit this Compromise Agreement for the approval of the Supreme Court *En Banc* in the consolidated cases docketed as G.R. No. 210922 and G.R. 207281, and the judgment on the Compromise Agreement rendered by the Honorable Court shall be final and executory, and no further appeal shall be made by either party.

2. DBP shall release the full amount of the petitioning ERIP-IV Retirees' early retirement incentive under the ERIP-IV Program, without any interest whatsoever to their duly authorized representative, Atty. Howard M. Calleja, subject to his submission of a Special Power of Attorney executed by the Retirees, under the following conditions:

(a) Release of the subject incentive shall be within twenty (20) working days from the receipt of the Supreme Court's resolution approving the Compromise Agreement and the submission by the petitioning ERIP-IV Retirees of individual Quitclaims/Releases and Waivers as well as complete documents relative to their availment of the ERIP-IV Program.

(b) It is understood that ERIP-IV incentives to be released shall be net of any outstanding payables that the petitioning ERIP-IV Retirees owe DBP, the DBP Provident Fund and the DBP Cooperative Credit Union; as well as any specific employee benefit received during their employment which is presently the subject of COA disallowances.



(c) The computation and determination by the DBP Human Resources Management Group of net ERIP-IV incentives to be released to the ERIP-IV Retirees shall be final, binding and conclusive upon the parties.

3. In consideration of their receipt of their ERIP-IV incentives, each of the petitioning ERIP-IV Retirees hereby agree to unconditionally and voluntarily release, waive and forever discharge DBP, its stockholders, officers, directors, agents and its employees, from any and all claims, demands, obligations, liabilities, indebtedness, and causes of action of every type, kind, nature, description or character, known or unknown, direct or indirect, whether civil, criminal or administrative, which arose as a result of, or in connection with or otherwise relating to their employment with DBP, including any and all claims for PERA/AdCom differential and similar benefits, their intention being to completely and absolutely free DBP and its officers, employees, and agents from such claims, demands, or causes of action.

4. The Quitclaim/Release and Waiver submitted by the Retirees pursuant to par. 2 (a) and as stated in par. 3 may be pleaded for the dismissal of any pending case, and as a bar to future suits that may be brought in any court, office or agency of whatever jurisdiction.

5. The parties acknowledge that they have read and understood the contents of this Agreement and that they have signed the same willingly, voluntarily, and with full knowledge of their rights and obligations.

6. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter and shall super[s]ede any prior expression of intent or understanding with respect to the transaction. This Agreement may not be amended or modified, except by written agreement of the parties hereto.

7. This Agreement shall be binding upon and be enforceable by the parties hereto and their respective successors and assigns.

8. If any one of the provisions contained in this Agreement or documents executed in connection herewith shall be declared invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

**IN WITNESS WHEREOF**, the parties hereto have set their hands on the date and place first above-written.

**THE CY 2011-2012 PETITIONER-  
RETIREES OF THE  
DEVELOPMENT BANK OF THE  
PHILIPPINES UNDER ITS EARLY  
RETIREMENT INCENTIVE  
PROGRAM-IV**

**DEVELOPMENT BANK OF THE  
PHILIPPINES**

Represented by:

Represented by:

(Sgd.)  
**ATTY. HOWARD M. CALLEJA**  
Counsel

(Sgd.)  
**CECILIA C. BORROMEO**  
President and CEO



Signed in the presence of:

(Sgd.)  
Atty. Daniel [indecipherable]

(Sgd.)  
Atty. Rene A. Gaerlan

ACKNOWLEDGMENT

x x x x<sup>117</sup>

In their Manifestation and Motion for Resolution with Joint Motion for Judgment Based on Compromise Agreement<sup>118</sup> dated March 22, 2018, the petitioners-retirees and DBP pray that:

1. The Honorable Court resolve the consolidated cases G.R. Nos. 207281 and 210922; and

2. In the event of a decision in favor of DBP in G.R. No. 210922, the parties pray for the Honorable Court to approve the attached Compromise Agreement and that judgment be rendered in accordance therewith, without pronouncement as to the cost of suit.<sup>119</sup>

In the same Motion, the parties acknowledge that “COA is inevitably an indispensable party to a full and complete resolution of the consolidated cases and as such, must be given an opportunity to express its position for or against the subject compromise.”<sup>120</sup> Pursuant to this, DBP wrote a letter to COA.

For its part, the COA, thru Chairperson Michael G. Aguinaldo, sent a letter in reply to DBP, the pertinent portions of which are reproduced below:

This refers to your letter dated 6 July 2017 forwarding, for the consideration of this Office, the Opinion of the Office of the Government Corporate Counsel (OGCC) on the proposed Compromise Agreement between the [DBP] and the [petitioners-retirees] in “*Abanto, et al. v. Board of Directors of DBP, G.R. No. 207281.*”

In its Opinion dated 10 May 2017, the OGCC concluded that “**DBP may enter into a compromise agreement with the petitioners but subject to the express consent of the COA and approval of the Supreme Court.**” The OGCC stated that **COA is an indispensable party to any compromise agreement between the petitioners and DBP and thus, should be a signing party** to the proposed agreement.

We take note of the fact that *G.R. No. 207281* is consolidated with *G.R. No. 210922*, a case initiated by DBP against COA questioning the [ND] against the release of retirement benefits to an earlier batch of retirees under a similar [ERIP]. It is this very ND that prompted the DBP to withhold

<sup>117</sup> Id. at 1021-1029. Citations omitted.

<sup>118</sup> Id. at 1015-1020.

<sup>119</sup> Id. at 1016.

<sup>120</sup> Id.



the release of the retirement benefits of Abanto, et al. leading to the filing of *G.R.207281* before the Supreme Court.

**Considering that the issue on the propriety and/or legality of the disallowance on the retirement benefits under the ERIP is *litis pendentia*, this Commission deems it prudent to await the final decision of the Supreme Court on the case or on the proposed compromise agreement before taking any further action on [the] proposal.**<sup>121</sup>

However, contrary to the opinion of the OGCC, the Court rules that the express consent of the COA is not necessary for the validity of the Compromise Agreement between DBP and the petitioners-retirees, in light of the decision reached by this Court in this case which upholds the validity of the ERIPs of DBP.

In view of the Court's ruling herein that the ERIP IV is valid, there is nothing that prevents DBP from releasing the benefits under ERIP IV-2010.

Thus, the Court finds the Compromise Agreement legally acceptable, nothing therein being contrary to laws, morals, good customs, and public policy, and the same having been freely and intelligently executed by and between the petitioners-retirees (including petitioners-movants) and DBP, judicial approval thereof is in order.

**WHEREFORE**, the Petition for *Certiorari* dated February 3, 2014 filed by the Development Bank of the Philippines in **G.R. No. 210922** is **GRANTED**. The Decision No. 2013-046 dated January 30, 2013 of the Commission on Audit (COA) which affirmed the Notice of Disallowance (ND) No. ERIP-2006-007(03-06) dated May 17, 2007 disallowing the payment of retirement benefits to DBP officials and employees in the total amount of ₱747,174,594.28 is hereby **REVERSED AND SET ASIDE**. The Temporary Restraining Order dated February 18, 2014 restraining the COA from implementing Decision No. 2013-046 and ND No. ERIP-2006-007(03-06) is made **PERMANENT**.

Further, in **G.R. No. 207281**, judgment is hereby rendered in accordance with the Compromise Agreement between the petitioners-retirees (including petitioners-movants) and DBP which was submitted to the Court, and the parties are enjoined to abide by its terms and conditions.

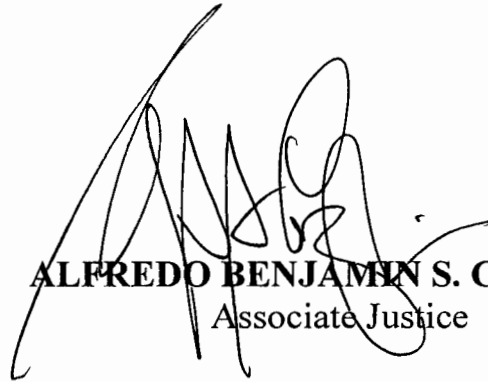
Furthermore, the Motion for Inclusion as petitioners in G.R. No. 207281 of petitioners-movants Mary Irma D. Lara and Josephine Jaurigue dated October 19, 2017 is hereby **GRANTED**.

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<sup>121</sup> Id. at 1030. Emphasis and underscoring supplied.

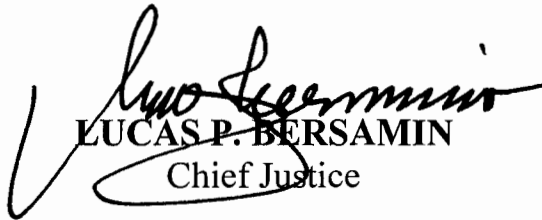


**SO ORDERED.**



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

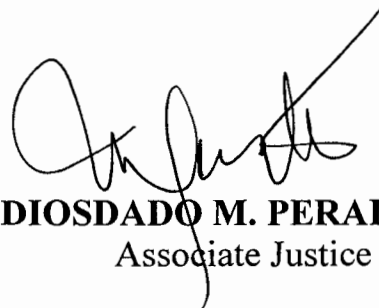
WE CONCUR:



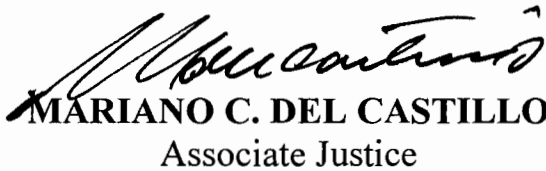
**LUCAS P. BERSAMIN**  
Chief Justice



**ANTONIO T. CARPIO**  
Associate Justice



**DIOSDADO M. PERALTA**  
Associate Justice



**MARIANO C. DEL CASTILLO**  
Associate Justice

(On official leave)  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice



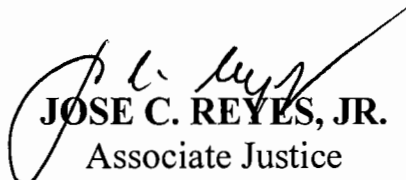
**MARVIC M.V.F. LEONEN**  
Associate Justice

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

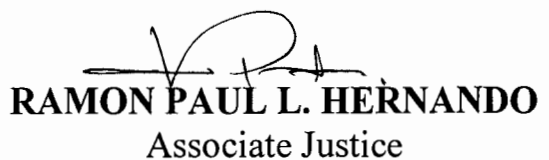
<sup>reyes</sup>  
**ANDRES B. REYES, JR.**  
Associate Justice



**ALEXANDER G. GESMUNDO**  
Associate Justice



**JOSE C. REYES, JR.**  
Associate Justice



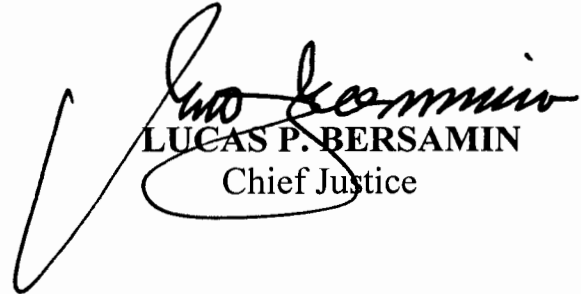
**RAMON PAUL L. HERNANDO**  
Associate Justice



**ROSMAR D. CARANDANG**  
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.



**LUCAS P. BERSAMIN**  
Chief Justice

