

Republic of the Philippines  
Supreme Court  
Manila

EN BANC

NARCISO M. MAGANTE (DAMA), G.R. No. 253395  
MELITO B. LUPANGCO,  
WADHUMAR SABADDIN, RASUL G.  
BARAOCOR, CASIMIRO L. FLORES,  
JR., NARCISO H. ABUEME, ELENOM.  
TELMO, PABLO L. EQUIO, JR.,  
(NEWU) ABNER P. ELERIA AND  
VICENTE M. BABIERA (NECU),  
*Petitioners,*

- versus -

COMMISSION ON AUDIT, NATIONAL  
POWER CORPORATION (NPC) AND  
POWER SECTOR ASSETS AND  
LIABILITIES MANAGEMENT  
CORPORATION (PSALM),

*Respondents.*

X ----- X  
POWER SECTOR ASSETS AND  
LIABILITIES MANAGEMENT  
CORPORATION,

G.R. No. 253967

Present:

*Petitioner,*

- versus -

COMMISSION ON AUDIT (COA), COA

GESMUNDO, C.J.,  
LEONEN,  
CAGUIOA,  
HERNANDO,  
LAZARO-JAVIER,  
INTING,  
ZALAMEDA,  
LOPEZ, M. V.,

CHAIRMAN HON. MIGUEL G. GAERLAN,  
 AGUINALDO, HON. COA ROSARIO,  
 COMMISSIONERS JOSE A. FABIA LOPEZ, J. Y.,  
 AND ROLANDO C. PONDOC, MSSRS. DIMAAMPAO,  
 TIMOTEO I. JUDAYA, EDGARDO E. MARQUEZ,  
 NOHAY, CARLITO P. GALIVO, KHO, JR., and  
 ENRIQUE U. BETOY, NEIL A. AVILA, SINGH,\* JJ.  
 ZOL D. MEDINA, AND MSES. MA.  
 SOCORRO D. MARFA AND  
 ELIZABETH D. ALORRO

Promulgated:

*Respondents.*February 18, 2025x -----  ----- x**DECISION****ZALAMEDA, J.:**

The controversy in these cases has stretched out for nearly two decades. The Court has laid down several rulings to adjudicate and clarify the issues surrounding this matter. It is high time for the Court to write *finis*, have the parties settle their obligations, and for the claimants to finally receive what is due them.

Before the Court are two consolidated Petitions<sup>1</sup> for *Certiorari* under Rule 65 of the Rules of Court assailing Decision No. 2019-416<sup>2</sup> of the Commission on Audit (COA) dated September 23, 2019 in COA Case No. 2018-285.

**Antecedents**

The facts of the case, as summarized by the COA in Decision No. 2019-416, are as follows:

On June 26, 2001, [Republic Act No. 9136], otherwise known as the Electric Power Industry Reform Act (EPIRA), was enacted to provide reforms in the electric power industry, which includes the privatization of the assets and liabilities of the [National Power Corporation (NPC)].

\* On Leave.

<sup>1</sup> *Rollo*, G.R. No. 253395, pp. 3-27; *rollo*, G.R. No. 253967, pp. 3-27.

<sup>2</sup> *Rollo*, G.R. No. 253967, pp. 37-58. The September 23, 2019 Decision in Decision No. 2019-416 was signed by Chairperson Michael G. Aguinaldo and Commissioners Jose A. Fabia and Roland C. Pondoc of the Commission on Audit, Quezon City.



Pursuant to this objective, EPIRA created the [National Power Board (NPB)] consisting of seven Cabinet Secretaries, to wit: (a) Secretary of Finance, (b) Secretary of Energy, (c) Secretary of Budget and Management, (d) Secretary of Agriculture, (e) Secretary of Environment and Natural Resources, (f) Secretary of Interior and Local Government, and (g) Secretary of Trade and Industry, and two heads of agencies, to wit: the Director-General of the National Economic and Development Authority and the President of the NPC.

On November 18, 2002, in line with the privatization of NPC and pursuant to Section 63 of the EPIRA, NPB issued NPB Resolution No. 2002-124 which provides for the Guidelines on the Separation Program of NPC and the Selection and Placement of Personnel in the NPC Table of Organization. Under said resolution, all NPC personnel shall be terminated on January 31, 2003 and shall be entitled to separation benefits. On same date, NPB issued NPB Resolution No. 2002-125 constituting a transition team tasked to manage and implement NPC's separation program.

The members of NPC [Drivers and Mechanics Association (DAMA)], NPC Employees and Workers Union (NEWU)-Northern Luzon Regional Center, and all other concerned NPC employees filed a Petition for Injunction before the SC to enjoin the implementation of NBP Resolution Nos. 2001-124 and 2002-125. They contended that the resolutions were not passed by a majority of the NPB members since only three out of the nine members were present and qualified to vote during the meeting held for that purpose.


The SC did not issue a temporary restraining order, thus, NPC proceeded with the termination beginning January 31, 2003.

Later, in Decision dated September 26, 2006, the SC nullified NBP Resolution Nos. 2001-124 and 2002-125. The SC held that the resolutions were not properly enacted considering the failure of the four specifically identified Cabinet Secretaries to personally approve and sign the resolutions[. . .]

However, said decision was silent as regards the effect of the nullity of the NPB resolutions to the terminated/separated NPC employees[.]

Thus, in Resolution dated September 17, 2008, the SC clarified that the logical and necessary consequence of the declaration of nullity of NBP Resolution Nos. 2001-124 and 2002-125 is the illegality [of the] dismissal of the employees on January 31, 2003. Accordingly, the terminated/separated NPC employees have the right to reinstatement or separation pay in lieu of reinstatement, pursuant to a validly-approved separation program, backwages, wage adjustments, and all other benefits accruing from January 31, 2003 until actual reinstatement or payment of separation pay, less the amount of separation benefits previously received in favor of the counsels, Attys. Cornelio P. Aldon and Victoriano V. Orociao, in accordance with the Labor Code.

On October 10, 2008, the SC Decision dated September 26, 2006 became final and executory, and an Entry of Judgment thereof was made on October 27, 2008.



In a Resolution dated December 10, 2008, the SC granted the motion for execution, and directed the Chairman and Members of the NPB and the President of NPC to prepare a verified list of the names of all NPC employees terminated/separated as a result of the implementation of NBP Resolution Nos. 2001-124 and 2002-125, and pay or cause to be paid immediately the amounts due to affected NPC employees including 12% legal interest. Likewise, the SC directed the Office of the Clerk of Court and ex-officio Sheriff of the Regional Trial Court (RTC) of Quezon City (QC) to issue a Writ of Execution based on the list submitted by NPC and undertake all necessary actions to execute the decision and resolution.

Citing willful failure of the NPB and NPC to comply with the Resolution dated December 10, 2008, the terminated/separated NPC employees, in a Manifestation with Urgent Omnibus Motions dated February 9, 2009, moved for the garnishment and/or levy of NPC assets, including but not limited to the assets of PSALM, for the satisfaction of the judgment.

This prompted PSALM to file before the SC a Manifestation on February 25, 2009 to stress that it is not bound by the judgment rendered since it is not a party in the case. Moreover, PSALM pointed out that the EPIRA does not allow garnishment and levy of its assets to satisfy the judgment against NPC since it is not one of those liabilities transferred to and assumed by it at the effectivity of the EPIRA.<sup>3</sup>

### **G.R. 253395**

Members of the NPC DAMA, NPC NEWU-Northern Luzon Regional Center, and other employees filed a petition for injunction before this Court, docketed as G.R. No. 156208, praying that NPB Resolution No. 2002-124 and NPB Resolution No. 2002-125 both be declared void. Their main argument was that the resolutions were passed without the majority of the NPB present. They allege that only three out of the nine members were actually there at the meeting. The other attendees at the meeting were merely representatives or designated alternates of the actual members.<sup>4</sup>

While the case was pending, however, the NPC proceeded with terminating its employees starting on January 31, 2003.<sup>5</sup>

On September 26, 2006, the Court promulgated its Decision in G.R. No. 156208,<sup>6</sup> granting the petition for injunction and declaring NPB Resolution No. 2002-124 and No. 2002-125 void (*2006 Decision*). Since the Decision did not discuss its effect on the already-terminated employees, petitioners Narciso M. Magante (DAMA), Melito B. Lupangco, Wadhumar Sabaddin, Rasul G.

<sup>3</sup> *Id.* at 37-40.

<sup>4</sup> *Rollo*, G.R. No. 253395, p. 32.

<sup>5</sup> *See id.*

<sup>6</sup> *See NPC Drivers and Mechanics Association v. National Power Corp.*, 534 Phil. 233 (2006) [Per J. Chico-Nazario, First Division].

Baraocor, Casimiro L. Flores, Jr., Narciso H. Abueme, Eleno M. Telmo, Pablo L. Equio, Jr., (NEWU) Abner P. Eleria and Vicente M. Babiera (NECU; collectively, petitioners), asked for clarification from the Court.<sup>7</sup>

The Court, in its September 17, 2008 Resolution,<sup>8</sup> clarified that the necessary consequence of the 2006 Decision is that petitioners' termination amounted to illegal dismissal, thus:

**IN VIEW OF THE FOREGOING**, we hereby *RESOLVE* to:

(1) *PARTIALLY GRANT* the Motion for Clarification and/or Amplification of petitioners by affirming that, as a logical and necessary consequence of our Decision dated [September 26,] 2006 declaring null and without effect NPB Resolutions No. 2002-124 and No. 2002-125 and enjoining the implementation of the same, petitioners have the right to reinstatement, or separation pay in lieu of reinstatement, pursuant to a validly approved Separation Program; plus backwages, wage adjustments, and other benefits accruing from [January 31,] 2003 to the date of their reinstatement or payment of separation pay; but deducting therefrom the amount of separation benefits which they previously received under the null NPB Resolutions;

(2) *PARTIALLY GRANT* the Motion for Approval of Charging (Attorney's) Lien of Atty. Aldon and Atty. Orocio and *ORDER* the entry in the records of this case of their ten percent (10%) charging lien on the amounts recoverable by petitioners from respondent NPC by virtue of our Decision dated [September 26,] 2006; and

(3) *ORDER* that Entry of Judgment be finally made in due course in the case at bar.

**SO ORDERED.**<sup>9</sup>

The Court's 2006 Decision became final and executory on October 10, 2008. Subsequently, the Court granted the motion for execution then directed the NPC to prepare a verified list of the terminated employees and start paying what is due them. Two months later, however, the NPC had not yet complied with the Court's directives, prompting the terminated employees to file an urgent motion for the garnishment and/or levy of the assets of the NPC and PSALM.<sup>10</sup>

The NPC finally submitted the list of 9,272 terminated employees on October 20, 2014. On the other hand, PSALM manifested to the Court that it should only be liable for obligations under the EPIRA Law, which does not include the payment of separation benefits to NPC employees.<sup>11</sup>

<sup>7</sup> *Rollo*, G.R. No. 253395, p. 32.

<sup>8</sup> *See NPC Drivers and Mechanics Association v. National Power Corp.*, 587 Phil. 189 (2008) [Per J. Chico-Nazario, First Division].

<sup>9</sup> *Id.* at 215-215.

<sup>10</sup> *Rollo*, G.R. No. 253395, p. 32-A.

<sup>11</sup> *Id.* at 36.

In its June 30, 2014 Resolution,<sup>12</sup> the Court rejected PSALM's contention and instead held it directly liable for the obligation. The Court explained that this is part of the obligations that PSALM took over from the NPC when the EPIRA Law took effect. However, the Court pointed out that petitioners should comply with the proper procedure for enforcing a judgment award against the government and file their money claims before the COA.

### *COA Ruling*

In assailed Decision No. 2019-416 dated September 23, 2019, the COA ruled:

**WHEREFORE**, premises considered, the Petitions for Money Claim of the employees of the National Power Corporation (NPC) terminated/separated pursuant to National Power Board Resolution Nos. 2002-124 and 2002-125 both dated November 18, 2002, against NPC and Power Sector Assets and Liabilities Management Corporation (PSALM), are hereby **PARTIALLY GRANTED**, the computation of the entitlement of each employee is as provided in this decision consistent with the guidelines set forth by the Supreme Court in its Resolution dated November 21, 2017 in the case of *NPC Drivers and Mechanics Association, et. al vs. NPC, et al.*, subject to the availability of funds and the usual accounting and auditing rules and regulations.

Accordingly, NPC and PSALM are ordered to immediately update the NPC List and Computation in accordance with this decision and furnish the Supervising Auditor (SA) a copy, and thereafter, schedule the payment to the entitled NPC employees. NPC and PSALM are hereby directed to do the same with respect to the attorney's fees of Attys. Cornelio P. Aldon and Victoriano V. Orocio.

Furthermore, the SA is directed to validate the computation of the updated NPC List and Computation, as well as the attorney's fees of Attys. Aldon and Orocio. The Assistant Commissioner, Corporate Government Sector (CGS), and the Director, CGS-Cluster 3, both of this Commission, shall provide the SA with the necessary support and additional personnel in order to complete the validation with utmost dispatch.<sup>13</sup>

COA ruled on the money claims in the now assailed Decision No. 2019-416. COA held that petitioners' money claim is partly meritorious. It noted that petitioners' entitlement to the monetary awards have been sufficiently established by the Court in its various rulings in G.R. No. 156208.<sup>14</sup>

On the other hand, COA held that, following the Supreme Court's

<sup>12</sup> See *NPC Drivers and Mechanics Association v. National Power Corp.*, 737 Phil. 210 (2014) [Per J. Brion, Special Third Division].

<sup>13</sup> *Rollo*, G.R. No. 253395, p. 50.

<sup>14</sup> See *id.* at 31-50.

November 21, 2017 Resolution in G.R. No. 156208, those who had been re-hired by NPC, absorbed by PSALM or Transco, or transferred to another government agency, were not entitled to backwages, as these amount to unjust enrichment to the prejudice of the government. Moreover, the re-hired employees were also not entitled to salary differentials because they cannot benefit from NPB Resolutions No. 2002-124 and No. 2002-125, which have been declared void. Thus, the COA did not make a definite ruling on the claims of the re-hired employees.<sup>15</sup>

Next, the COA made a *pro hac vice* ruling to uphold the Court's imposition of legal interest, ruling that the computation shall be reckoned from the individual employee's date of entitlement to the monetary awards, and at these rates: (1) 12% per annum from October 10, 2008 to June 30, 2013; and (2) 6% per annum from July 1, 2013 onwards.<sup>16</sup>

Finally, the COA held that claims for attorney's fees of Atty. Napoleon Galit, who represents some of the petitioners, and the 5% agency fee for DAMA, NEWU, and NECU are not within the purview of the commission, and should be prosecuted in accordance with the Rules of Court.<sup>17</sup>

#### **G.R. 253967**

In its Petition, PSALM argues that COA is authorized to determine the source of funds for the payment of the judgment award. Moreover, said award must be sourced solely from the proceeds from the sale or privatization of NPC's assets. PSALM insists that it should not be mandated to use any other funds to pay NPC's obligation in this case. PSALM avers that, while EPIRA mandates it to manage and privatize NPC's assets to meet the latter's obligations, the monetary award in the DAMA case is more than the proceeds from the privatization of NPC's assets. PSALM is not required to use any other funds to pay NPC's obligations. If PSALM were to use funds other than the proceeds of NPC's privatization, it would be disbursing public funds in a manner not provided for under EPIRA.<sup>18</sup>

PSALM also contends that legal interest may only be paid subject to the availability of funds. It notes that the COA had stated in its Decision No. 2017-110 that legal interest cannot be awarded in the absence of funds duly appropriated for such purpose.<sup>19</sup>

Further, PSALM argues that "each money claim in relation to the

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<sup>15</sup> *Id.* at 39.

<sup>16</sup> *See id.*

<sup>17</sup> *See id.*

<sup>18</sup> *Rollo*, G.R. No. 253967, pp. 15-16.

<sup>19</sup> *Id.* at 18.



*DAMA* case should be carefully examined and validated on a case-to-case basis subject to submission of complete and proper documentation consistent with Sec. 4 of Presidential Decree No. 1445, or the State Audit Code of the Philippines, which states that “claims against government funds shall be supported with complete documentation.”<sup>20</sup>

Finally, PSALM points out that the COA failed to specify the “other monetary benefits” to be included in the computation of backwages,” and the proper person or entity to direct the release of said funds pursuant to the *DAMA* ruling.<sup>21</sup>

In its Comment,<sup>22</sup> the COA, through the Office of the Solicitor General, argued that it is not within the Commission’s functions to determine the source of funds for the payment of the money claims. Its jurisdiction, as laid down in Article IX-D, Section 2 (1) of the Constitution, is for the “examination, audit, and settlement” of the use and disbursement of public funds. While the COA has the power to determine the scope of its audit and examination, this does not mean that it can also determine the source of the funds from which money claims may be satisfied. Likewise, it is not for the COA to determine whether the proceeds from NPC’s privatization will cover its judgment obligation in G.R. No. 156208.<sup>23</sup> It is for Congress, which has the power to appropriate public funds, that has the power to determine the source of funds for the money claims of the terminated NPC employees.<sup>24</sup>

Next, the COA avers that the payment of legal interest has already been mandated by the Court in its November 21, 2017 Resolution in G.R. No. 156208. This is “imperative without qualification” and cannot be made to depend on availability of funds.<sup>25</sup>

The COA further points out that the NPC List of claimants was not the sole basis for its Decision. Each claim would still be subject to the validation and auditing, as directed by the Court.

As to the inclusions in the award for backwages, the COA clarified that the same includes “those that are attached to an employee’s salary by virtue of the office that he or she held.” Moreover, considering the number of claimants in this case, the COA could not be expected to identify all the monetary benefits to be considered in the computation of backwages. In addition, the same said benefits are subject to validation.<sup>26</sup>

<sup>20</sup> *Id.* at 19; Sec. 4(6) of Presidential Decree No. 1445.

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

<sup>22</sup> *Id.* at 410–447.

<sup>23</sup> *Id.* at 428.

<sup>24</sup> *Id.* at 433.

<sup>25</sup> *Id.* at 436.

<sup>26</sup> *Id.* at 440.

### Issues

In the present case, petitioners assail COA Decision No. 2019-416, arguing that the COA committed grave abuse of discretion for:

12.1 [Failure to] grant the more than 7,000 rehired NPC workers of their salary differentials.

12.1.1. COA Case No. 2018-285 was the only class-suit petition from which adjudicated all claims by the entire 9,272 claimants.

12.2. Failing to accord recognition on the herein petitioners substantially the same petitioners who filed the Petition in G.R. No. 156208, through their counsels, Attys. Cornelio P. Aldon and Victoriano V. Orocio.

12.3. Failing to realize that it was upon the class-suit petition for money claim in COA Case No. 2018-285 that COA has acquired jurisdiction over all other 9,272 claimants.

12.4. Failing to grant the class-suit petitioners' and their lawyers the attorney's fee of Atty. Napoleon Galit, being the counsel who obliged himself and filled the class-suit petition for money claim in COA Case No. 2018-285 - even shouldering payment of docket fee for the class-suit petitioners.

12.5. Failing to accord recognition of the agency fee agreed by NPC Unions, DAMA, NEWU and NECU.

12.6. Failing to apply the Supreme Court's decision and various resolutions in G.R. No. 156208 regarding entitlement of those rehired workers to their salary differential which should have not been equated to award of full backwages granted to those unrehired workers since these [two] terms, i.e., full backwages and salary differentials or adjustment are [two] different things. The first, apply to the unrehired and the latter to the rehired.

12.7. Failing to apply the principle and consequences of declared void NPC Board Resolutions No. 2002-124 and 2002-125, which caused all the class-suit petitioners' severance from their employment at NIC, entitled to the restoration of their promulgation of the above-stated [two] NPC Board Resolutions No. 2002-124 and 2002-125. Being void, herein petitioners should have been restored to their full enjoyment of their salaries by and/or PSALM, which were reduced when they were rehired. In reiteration, this issue was long settled *finis* by this Honorable Court but sadly ignored in the assailed COA Decision.<sup>27</sup>

PSALM, for its part, imputes grave abuse of discretion upon COA when it failed to consider that:

<sup>27</sup> *Rollo*, G.R. No. 253395, pp. 11-12.

A [i]t is authorized under its constitutional mandate and the DAMA ruling, to determine the source of funds for the payments in the DAMA case. The DAMA ruling is explicit on the source of fund for such payments which the COA should have taken into account in its Decision.

B [t]he amount to be paid to the former NPC employees, entitled to receive payment pursuant to the DAMA ruling, should be derived solely from the proceeds of the sale or privatization of NPC's assets which have been transferred to PSALM under the EPIRA.

C [t]he payment of legal interest in this case should be subject to the availability of funds.

D [t]o validate a claimant's entitlement to payment under the DAMA ruling, the status of his alleged employment relations which NPC or his rehiring by the government should be confirmed by the Civil Service Commission. The entitlement of each claimant should not be on the sole basis of the NPC List and Computation but should be sufficiently supported by relevant documents.

E [t]he benefits to be included in computation of the backwages should be specified. Whether the 2019 Decision failed to state if the COA Commission Proper, the Supervising Auditor, or any other COA official shall give the directive to release the amount to the entitled employee.<sup>28</sup>

### **Ruling of the Court**

#### **G.R. No. 253395**

Initially, the Petition in G.R. No. 253395 must be denied for procedural infirmities. The petition was filed out of time, and the payment of the docket fees and other fees was late.

In order to determine if the petition was timely filed, the Court must first examine the nature of the petition. Petitioners have denominated the Petition as one for *certiorari* under Rule 65 of the Rules of Court. However, the allegations in the Petition readily reveal that the same is an appeal of the COA's Decision in COA Case No. 2018-285 and its subsequent denial of petitioners' motion for reconsideration. In cases assailing judgments, resolution, or final orders of the COA, Rule 65 must be read in conjunction with Rule 64, which specifically governs the review of these issuances.<sup>29</sup> Thus, the filing of such petitions is governed by Section 3 of Rule 64, to wit:

<sup>28</sup> *Rollo*, G.R. No. 253967, pp. 13–14.

<sup>29</sup> **RULE 64 Review of Judgments and Final Orders or Resolutions of the Commission on Elections and the Commission on Audit**

**SEC. 1. Scope.** — This Rule shall govern the review of judgments and final orders or resolutions of the Commission on Elections and the Commission on Audit.



**SEC. 3. Time to file petition.** — The petition shall be filed within [30] days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than [five] days in any event, reckoned from notice of denial.

Based on petitioners' allegations, they received a copy of the assailed Decision on September 24, 2019. This means that they had until October 24, 2019 to file the Petition before the Court. However, the period was interrupted when they filed a motion for reconsideration on October 14, 2019. Therefore, petitioners only had the balance of the period within which to file their Petition for *Certiorari* before the Court, leaving a balance of 11 days. The motion was denied on September 11, 2020, which gave them until September 22, 2020 to file their Petition for *Certiorari*. The Petition was filed only on September 30, 2020. As such, the Petition was filed out of time.

Nonetheless, the Court has the discretion to relax technical rules of procedure in favor of substantial justice. In this case, the immediate dismissal of the Petition would prejudice thousands of re-hired employees of the NPC, as well as their counsels, who would be deprived of their lawful fees. The more prudent course of action is to allow the full ventilation of the substantive issues raised.

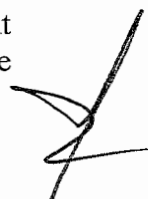
*The claims for attorney's fees and agency fees are not within the jurisdiction of the COA to grant*

In G.R. 253395, petitioners' Petition centers on two major points: (1) the award of salary differentials to re-hired employees; and (2) entitlement to attorney's fees of Atty. Galit and agency fee of the unions DAMA, et al.

Initially, they argue that the COA failed to recognize that the petition before it was a class suit and that it had acquired jurisdiction over all the 9,272 claimants.

However, a quick perusal of the assailed Decision dispels this notion. At the beginning of the same, the COA stated:

Before this Commission are the Petitions for Money Claim's of the employees of the National Power Corporation (NPC) terminated/separated pursuant so National Power Board (NPB) Resolution Nos, 2092-124 and 2982-125 both dated November 18, 2002, against NPC and Power Sector Assets and Liabilities Management Corporation (PSALM), for the payment of the judgment award for backwages, salary differentials, wage



adjustments, separation pay, and interest based on the decision of the Supreme Court (SC) in *NPC Drivers and Mechanics Association (DAMA), et al. vs. NPC, et al.*

Considering that the petitions involve the same claims against the same agency, this Commission consolidated the same for a more uniform application of the rules.<sup>30</sup>

Thus, it is clear that the COA recognizes all the claimants subject of the Court's decision in G.R. No. 156208. The Decision applies to all of them with equal force.

Corollarily, petitioners claim that the COA should have recognized Atty. Galit's right to attorney's fees and the right to agency fee of the claimant unions. However, COA did not deny such claim, but nonetheless explained that:

The grant of agency fee and attorney's fees is not within the scope of the authority of this Commission. The right of the unions to the agency fee, and Attys. Galit, Nario, and Javier to attorney's fees, as may be established in the documents submitted, is a matter between them and their clients, and may be prosecuted in the manner provided under the Rules of Court.<sup>31</sup>

At this juncture, it bears pointing out that there are two main types of money claims which the COA may be confronted with.<sup>32</sup> The first type covers money claims originally filed with the COA.<sup>33</sup> These are limited to liquidated claims, or those determined or readily determinable from vouchers, invoices, and such other papers.<sup>34</sup> In dealing with these liquidated claims, the COA must investigate and weigh evidence.<sup>35</sup>

Conversely, the second type are money claims which arise from a final and executory judgment of a court or arbitral body. The Court has clarified that the power of the COA for audit review over this second type of money claims is limited. The COA cannot take cognizance of factual and legal issues that have been raised or could have been raised before the court or tribunal which previously had jurisdiction over the same.<sup>36</sup> "Accordingly, when a court or tribunal having jurisdiction over a money claim against the government renders judgment and the same becomes final and executory, the COA cannot

<sup>30</sup> *Rollo*, G.R. No. 253967, p. 37.

<sup>31</sup> *Id.* at 57.

<sup>32</sup> *Taisei Shimizu Joint Venture v. Commission on Audit*, 873 Phil. 323, 344 (2020) [Per J. Lazaro-Javier, *En Banc*].

<sup>33</sup> *Id.* at 345.

<sup>34</sup> *Euro-Med Laboratories, Phil., Inc. v. Province of Batangas*, 527 Phil. 623, 628 (2006) [Per J. Corona, Second Division].

<sup>35</sup> *See Uy v. Commission on Audit*, 385 Phil. 324 (2000) [Per J. Puno, *En Banc*].

<sup>36</sup> *Taisei Shimizu Joint Venture v. Commission on Audit*, 873 Phil. 323, 346–347 (2020) [Per J. Lazaro-Javier, *En Banc*].

alter the same and disregard the principle of immutability of final judgments.”<sup>37</sup>

Considering that the claim for attorney’s fees by Atty. Galit was not subject of the Court’s issuances in G.R. No. 156208, the COA correctly held that it had no power to determine, let alone grant, such claim. COA’s mandate in relation to “[m]oney claims due from or owing to any government agency”<sup>38</sup> extends only to the execution of the decision that granted such claim. It cannot grant any claim beyond what is in the ruling.

Meanwhile, petitioners argue that it was grave abuse of discretion for COA to not rule on the claim for agency fee by the claimant NPC unions, DAMA, NEWU, and NECU. First, the same claim is likewise not subject of the Decision in G.R. No. 156208. This issue was never adjudicated by the Court in any of its Decisions or resolutions in that case. Thus, the COA had no power to grant the same.

Second, an agency fee is an obligation between the union and non-union members recognized under the law. Thus, “[t]he collection of agency fees in an amount equivalent to union dues and fees, from employees who are not union members, is recognized by Article [259] (e) of the Labor Code.”<sup>39</sup>

The concept of “agency fee” was explained by the Court in *Peninsula Employees Union v. Esquivel*, thus:<sup>40</sup>

The recognized collective bargaining union which successfully negotiated the CBA with the employer is given the right to collect a reasonable fee called “agency fee” from non-union members who are employees of the appropriate bargaining unit, in an amount equivalent to the dues and other fees paid by union members, in case they accept the benefits under the CBA. While the collection of agency fees is recognized by Article 259 (formerly Article 248) of the Labor Code, as amended, the legal basis of the union’s right to agency fees is neither contractual nor statutory, but quasi-contractual, deriving from the established principle that non-union employees may not unjustly enrich themselves by benefiting from employment conditions negotiated by the bargaining union.

Accordingly, the payment of “agency fee” to the NPC unions is beyond the scope of the COA’s Decision. It must also be pointed out that the adjudication over claims for Atty. Galit’s attorney’s fees, as well as the NPC unions’ agency fees, call for the presentation of evidence to establish such claims. Therefore, these would best be ventilated in the proper case before the proper forum.

<sup>37</sup> *Spouses Ting v. Commission on Audit*, 908 Phil. 772, 776 (2021) [Per J. Zalameda, *En Banc*]

<sup>38</sup> 2009 Revised Rules of Procedures of the Commission on Audit. <https://www.coa.gov.ph/issuances/2009-revised-rules-of-procedures-of-the-commission-on-audit/>. Last accessed January 10, 2024.

<sup>39</sup> *Del Pilar Academy v. Del Pilar Academy Employees Union*, 576 Phil. 549, 555 (2008) [Per J. Nachura, Third Division].

<sup>40</sup> *Peninsula Employees Union v. Esquivel*, 801 Phil. 667, 675 (2016) [Per J. Perlas-Bernabe, First Division]. Citations omitted.



*COA did not commit grave abuse discretion when it refrained to rule on claims for salary differentials*

Petitioners maintain that in the November 21, 2017 Resolution in *NPC Drivers and Mechanics Association (DAMA) v. NPC*, the Court ruled that the re-hired employees, while not entitled to backwages, are entitled to salary adjustments, which they define as “the amount of benefit previously enjoyed by the re-hired group of workers – but were sadly cut-off, removed, or deducted from their basic pay at the time they were re-hired.”

The COA, however, refrained from ruling on the re-hired employees’ claim for salary differential:

While it would not seem equitable for such employees to receive less than other employees who were unrehired or employed elsewhere, nevertheless, they are likewise not entitled to receive salary differentials, since as the SC ruled, they cannot benefit from the nullified NPB Resolution Nos. 2002-124 and 2002-125 and at the same time be allowed to benefit from the award of full backwages, wage adjustments, and other benefits. Thus, this Commission shall refrain from ruling on the rehired employees’s claim for salary differential.<sup>41</sup>

A revisit to the Court’s November 21, 2017 Resolution in G.R. No. 156208 is in order.

Subsequent to the Court’s nullification of NPB Resolution Nos. 2002-124 and 2002-125 in its September 26, 2006 Decision, the parties to the case sought to clarify the effect of the ruling, particularly on the terminated employees. In a September 17, 2008 Resolution, the Court clarified that, as a necessary consequence of the Court’s September 26, 2006 Decision, the termination of NPC’s employees effected under NPB Resolution Nos. 2002-124 and 2002-125 was illegal. In ordinary cases, they would have been entitled to reinstatement. However, since reinstatement was impossible due to NPC’s reorganization, the terminated employees would be entitled to separation pay in lieu of reinstatement, backwages with wage adjustments and other benefits. Any amount already received as separation benefits would be deducted from the entire entitlement. Meanwhile, as the case was pending, NPC re-hired some of its terminated employees. Thus, the contention over what these re-hired employees are legally entitled to receive under the Court’s Decision.

<sup>41</sup> *Rollo*, G.R. No. 253967, p. 54.

In the Court's November 21, 2017 Resolution, the Court reiterated that its Decision has become final and executory. It further clarified the separated employees' entitlements under the Court's September 26, 2006 Decision, to wit:

**A. Separation pay in lieu of reinstatement**

The established rule is that an illegally dismissed civil service employee shall be entitled to *reinstatement* plus *backwages*. This rule is echoed in Section 9 of Republic Act No. 6656, which relates specifically to illegal dismissals due to a government agency restructuring plan found to be invalid.

However, when an entirely new set-up takes the place of the entity's previous corporate structure, the abolition of positions and offices cannot be avoided, thus, making reinstatement impossible. In which case, *separation pay* shall be awarded *in lieu of reinstatement*. The award of separation pay in illegal dismissal cases is an accepted deviation from the general rule of ordering reinstatement because the law cannot exact compliance with what is impossible.

Under the law, the separation pay in lieu of reinstatement due to each petitioner shall be *either* the: (1) Separation pay under the EPIRA and the NPC restructuring plan; or (2) Separation gratuity under Republic Act No. 6656, depending on their *qualifications*.

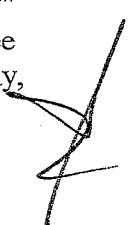
***1. Separation pay under the EPIRA and the NPC restructuring plan***

Republic Act No. 6656, the general law governing corporate reorganizations in the civil service, provides that the separation pay due to *entitled* civil service employees separated pursuant to a reorganization plan shall be the appropriate separation pay and retirement and other benefits under existing laws, **which in this case is the EPIRA mandating the NPC restructuring plan.**

A person is *qualified* to receive separation benefits under the NPC's restructuring plan if the following requirements concur: (a) he/she is an official or employee whose employment was severed pursuant to the privatization of the NPC; (b) he/she has rendered at least one year of service as of June 26, 2001; (c) he/she must not have qualified or opted to retire under existing laws; and (d) if a casual or contractual employee, he/she must have had his/her appointment approved or attested to by the CSC.

If qualified, the employee shall receive *separation pay under the NPC restructuring plan*, which is equal to **one and one-half months' salary for every year of service in the government**. To clarify, the formula to compute the amount of separation pay has **three components**, viz.: (a) base amount, consisting of the monthly salary; (b) multiplier of one and one-half months or 1.5; and (c) length of service.

As for the first component, the EPIRA IRR clearly defines "salary" as the basic pay *including* the 13th month pay received by an employee pursuant to his appointment but *excluding per diems*, bonuses, overtime pay,



honoraria, allowances and any other emoluments received in addition to the basic pay under existing laws. **In other words, the "base amount" must consist of basic pay or salary and 13th month pay exclusively.**

## **2. Separation gratuity under Republic Act No. 6656**

If the person does not meet all the above-mentioned requirements (*i.e.*, he/she is a contractual employee whose appointment was not approved by the CSC, *etc.*) but was separated pursuant to the restructuring, he/she is *not qualified* to receive the separation pay under the NPC's restructuring plan but is nonetheless entitled to a *separation gratuity* provided in Republic Act No. 6656 in the amount equivalent to **one month basic salary for every year of service.**

### **Reckoning period**

Both the *separation pay* under the NPC restructuring plan and *separation gratuity* under Republic Act No. 6656 entitle the employee to benefits based on the **number of years of service** rendered. While there is no question that length of service shall be counted from the first year of employment of each petitioner, We now clarify when this period must end.

Again, *separation pay* is awarded in this case because the petitioners could no longer be reinstated due to the abolition of their former positions and overall restructuring of the NPC. Thus, for purposes of computing separation pay in lieu of reinstatement, the length of service shall be computed **until the time reinstatement was rendered impossible.**

In the present case, the petitioners' reinstatement became impossible when their illegal dismissal was subsequently validated by the issuance of NPB Resolution No. 2007-55 on September 14, 2007, as correctly pointed out by PSALM.

Thus, for purposes of computing the petitioners' separation pay, their years of service shall be counted from their first year of employment until September 14, 2007, unless in the meanwhile, they would have reached the compulsory retirement age of sixty-five years.

## **B. Back wages**

We have consistently ruled that an illegally dismissed government employee is entitled to back wages from the time of his illegal dismissal until his reinstatement because he is considered as not having left his office. Following *Galang v. Land Bank of the Philippines*, back wages shall be computed based on the **most recent salary rate upon termination**.<sup>42</sup> (Citations omitted; emphases in the original.)

Nevertheless, the re-hiring of some of the employees terminated under the nullified NPB Resolution Nos. 2002-124 and 2002-125 gave rise to a peculiar situation where the rules for payment of backwages to illegally dismissed employees would not squarely apply. As the Court elucidated:

<sup>42</sup> *NPC Drivers and Mechanics Association v. National Power Corp.*, 821 Phil. 62, 105-108 (2017) [Per J. Leonardo-De Castro, *En Banc*].

In the recent case of *Campol v. Balao-As*, the Court explained at length the rationale supporting the award of **full back wages** in favor of an illegally dismissed civil service employee, **without deducting any income** that he may have earned in case he is employed anew in another government position during the pendency of the action. In *Campol*, the Sangguniang Bayan (SB) of Boliney, Abra passed a resolution in 2004 terminating Julius B. Campol as SB Secretary. In 2005, while his illegal termination case was still pending, Campol obtained another job as an administrative aide in the Public Attorney's Office. The Court ruled that Campol's PAO earnings should not be deducted from the award of full backwages, explaining as follows:

This entitlement to full backwages also means that there is no need to deduct Campol's earnings from his employment with PAO from the award. The right to receive full backwages means exactly this — that it corresponds to Campol's salary at the time of his dismissal until his reinstatement. Any income he may have obtained during the litigation of the case shall not be deducted from this amount. This is consistent with our ruling that an employee illegally dismissed has the **right to live and to find employment elsewhere during the pendency of the case**. At the same time, an employer who illegally dismisses an employee has the obligation to pay him or her **what he or she should have received had the illegal act not be done**. It is an **employer's price or penalty** for illegally dismissing an employee. (Emphases supplied.)

The Court further explained that this is also the prevailing doctrine in the award of back wages in the private sector, as previously held in *Bustamante v. National Labor Relations Commission* and *Equitable Banking Corporation v. Sadac*.

However, We revisit Our ruling in *Campol*. We agree with Hon. Justice Antonio T. Carpio's opinion that the award of full back wages in favor of an illegally dismissed civil service employee who was subsequently employed in another government agency certainly violates the constitutional prohibitions against double office-holding and double compensation in the civil service.

Section 7, Article IX-B of the Constitution provides:

SEC. 7. No elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure.

Unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries.

On the other hand, Section 8, Article IX-B of the Constitution provides:



SEC. 8. No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government.

Pensions or gratuities shall not be considered as additional, double, or indirect compensation.

Thus, We rule that petitioners who were subsequently: (a) rehired by the NPC, (b) absorbed by PSALM or Transco, or (c) transferred or employed by other government agencies, are not entitled to back wages.

Moreover, to award full back wages even to those who remained employed as a direct result of the 2003 reorganization amounts to unjust enrichment and damage to the government.


In the present case, the EPIRA and its IRR established policies governing the subsequent placement of all NPC employees affected by the restructuring, viz.: (a) giving the NPC board of directors the sole prerogative to hire the separated employees as new employees and to assign them to new positions with the corresponding compensation in accordance with its restructuring program and (b) entitling qualified displaced or separated personnel to preference in the hiring of the manpower requirements of PSALM and Transco.

Pursuant to these policies and as pointed out by PSALM, there were NPC employees who were: (a) rehired by NPC or (b) absorbed by PSALM or Transco as a direct result of the 2003 reorganization (Rehired or Absorbed NPC Personnel). These personnel immediately reported for work the day after their termination from NPC. True enough, a perusal of NPC's list of employees submitted in compliance to Our Resolution dated October 20, 2014 reveals that a majority of the listed personnel were either rehired by NPC or absorbed by PSALM or Transco on March 1, 2003 or within March 2003.

These circumstances lend peculiarity to the present case, setting it apart from *Campol*, *Bustamante*, and *Equitable Banking Corporation*. The novelty of this case's factual backdrop is even more evident in the following:

First, it is important to note that there was no break or gap in the rehired or absorbed NPC personnel's government service. They continuously had employment and a means to receive regular and periodic compensation. Thus, they were not deprived of the right to live nor prevented from earning a living to support their daily expenses and financial obligations. Moreover, they were not forced to seek employment elsewhere, because they were able to capitalize on the statutory preference given to them in filling up the manpower requirements in PSALM or Transco. Obviously, the evil sought to be avoided in the above-cited jurisprudence does not exist insofar as the rehired or absorbed NPC personnel are concerned.

Second, verily, the Court nullified NPB Resolution Nos. 2002-124 and 2002-125, and consequently held that the herein petitioners were illegally dismissed. However, in the meantime, NPC proceeded to implement



these resolutions. As a result, some of the petitioners were re-employed by NPC or hired by PSALM or Transco. In other words, while they may have been illegally dismissed, it cannot be denied that the rehired or absorbed NPC personnel nonetheless benefitted from the now-defunct NPB resolutions when they continued to be employed in the government and receive compensation for their service.

To allow them: (a) to enjoy, without reimbursement, the employee benefits they earned as rehired or absorbed NPC employees after termination from NPC until September 14, 2007 or the date of retirement, whichever is earlier and *simultaneously*, and (b) to benefit from the award of full back wages covering the same period is tantamount to permitting these personnel to occupy multiple positions in the civil service (*i.e.*, their original position in the NPC *and* their new position in the NPC, PSALM, or Transco after the reorganization) and to receive benefits separately for each of those positions.

It is clear that sustaining the effects of these NPB resolutions prior to nullification is incompatible with upholding the prevailing doctrine on the award of full back wages as a result of illegal separation after the same NPB resolutions were invalidated.

On the other hand, petitioners who were neither rehired by the NPC or absorbed by PSALM or Transco pursuant to the 2003 reorganization and subsequently employed in the private sector shall be entitled to full back wages (applying *Bustamante* and *Equitable Banking Corporation*).<sup>43</sup>

Petitioners' claims for salary differential is anchored on the fact these benefits were included in their compensation prior to termination, but they no longer received the same when they were re-hired.

Under Sec. 63 of the EPIRA Law, those who will be absorbed or rehired by any government-owned successor company will be considered as new employees, thus:

**SEC. 63. Separation Benefits of Officials and Employees of Affected Agencies.** – National government employees displaced or separated from the service as a result of the restructuring of the electricity industry and privatization of NPC assets pursuant to this Act, shall be entitled to either a separation pay and other benefits in accordance with existing laws, rules or regulations or be entitled to avail of the privileges provided under a separation plan which shall be one and one-half month salary for every year of service in the government: *Provided, however,* That those who avail of such privilege shall start their government service anew if absorbed by any government-owned successor company. In no case shall there be any diminution of benefits under the separation plan until the full implementation of the restructuring and privatization. Displaced or separated personnel as a result of the privatization, if qualified, shall be given preference in the hiring of the manpower requirements of the privatized companies. The salaries of employees of NPC shall continue to be exempt from the coverage of Republic Act No. 6758, otherwise known

<sup>43</sup> *Id.* at 110–114.

as "*The Salary Standardization Act.*" With respect to employees who are not retained by NPC, the government, through the Department of Labor and Employment, shall endeavor to implement re-training, job counseling, and job placement programs.

This was amplified in the EPIRA's Implementing Rules and Regulations (IRR):

RULE 33. SEPARATION BENEFITS

SEC. 3. *Separation and Other Benefits.*

[. . .]

(c) The governing board or authority of the entities enumerated in Section 3(b) hereof shall have the sole prerogative to hire the separated employees as new employees who start their service anew for such positions and for such compensation as may be determined by such board or authority pursuant to its restructuring program. Those who avail of the foregoing privileges shall start their government service anew if absorbed by any government agency or any government-owned successor company.

In other words, their re-employment is not as continuation of their previous service with NPC. Thus, they cannot claim the benefits of their previous positions. Unless they can show that the position to which they were hired held the exact same salary grade, remuneration, and benefits as to merit the same salary they had prior to reorganization, then they are entitled only to the compensation of the new position since they are considered as *new* employees.

Be that as it may, petitioners' claim, even if true, was not within the purview of the COA to decide in the assailed Decision. Additionally, the claim would require the presentation of evidence to establish whether petitioners are indeed entitled to the same. In any case, the COA did not commit grave abuse of discretion when it refrained from ruling on the claim for salary differential.

*G.R. No. 253967*

*PSALM's liabilities have been settled  
with finality by this Court*

Preliminarily, We restate that there is no longer any room for debate whether PSALM shall be responsible for the payment of NPC's obligations to the illegally dismissed employees. Under the EPIRA, NPC's liabilities had



been transferred to PSALM.<sup>44</sup> Further, the Court has elucidated that PSALM is directly liable for the judgment obligation, to wit:

We reiterate Our finding in Our Resolution dated June 30, 2014 that, upon the NPC's privatization, PSALM **assumed** all of its liabilities, **including the separation benefits due to the petitioners**.

That PSALM assumed the NPC's liability to pay these separation benefits is clear based on the following reasons: (1) The liability was already **existing** at the time of the EPIRA's effectivity and was transferred from NPC to PSALM by virtue of Section 49 of the law; (2) It is a **"Transferred Obligation"** as defined under the Deed of Transfer; and (3) Under the EPIRA, PSALM is **duty-bound** to settle the subject liability.<sup>45</sup> (Emphasis in the original.)

We also emphasized that "PSALM **expressly undertook** all NPC Transferred Obligations under **Section 3.01 of the Deed of Transfer**, which, as previously discussed, includes the liability to pay the petitioners' entitlement. Thus, it is now bound to ensure that it is settled." (Emphases in the original.)

Moreover, PSALM is "statutorily mandated not only to privatize NPC's generation assets, but also to manage the proceeds obtained from NPC's privatization including its net profit and use these proceeds to settle *all* of NPC's financial obligations, without exception."<sup>46</sup>

*COA has no jurisdiction to determine the source of funds to pay the judgment obligation*

We agree with the COA that its has no authority to determine the source of funds from the NPC's obligation to the terminated employees may be taken. The powers of the COA are defined by the Constitution:

## ARTICLE IX

### Constitutional Commissions


#### D. Commission on Audit

<sup>44</sup> SEC. 56. *Claims Against the PSALM Corp.* — The following shall constitute the claims against the PSALM Corp.:

- (a) NPC liabilities transferred to the PSALM Corp.;
- (b) Transfers from the national government;
- (c) New loans; and
- (d) NPC stranded contract costs.

<sup>45</sup> *NPC Drivers and Mechanics Association v. National Power Corp.*, 821 Phil. 62, 92 (2017) [Per J. Leonardo-De Castro, *En Banc*].

<sup>46</sup> *Id.* at 98.



[...]

SECTION 2. (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

(2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.

This is further specified in Presidential Decree No. 1445, the Government Auditing Code of the Philippines. Section 26 thereof states:

**SEC. 26. General jurisdiction.** — The authority and powers of the Commission shall extend to and comprehend all matters relating to auditing procedures; systems and controls, the keeping of the general accounts of the Government, the preservation of vouchers pertaining thereto for a period of ten years, the examination and inspection of the books, records, and papers relating to those accounts; and the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, as well as the examination, audit, and settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities. The said jurisdiction extends to all government-owned or controlled corporations, including their subsidiaries, and other self-governing boards, commissions, or agencies of the Government, and as herein prescribed, including non-governmental entities subsidized by the government, those funded by donation through the government, those required to pay levies or government share, and those for which the government has put up a counterpart fund or those partly funded by the government.

From the foregoing, it is clear that the COA's powers over debts and claims from or owing the government, such as NPC's judgment obligation in



this case, is limited to its “examination, audit, and settlement.” The COA is not the appropriate entity to determine the funds from which the settlement may be sourced.

On the other hand, under the Constitution, the power of appropriation is vested in the Legislature. Thereafter, budget execution comes under the domain of the Executive branch, which deals with the operational aspects of the cycle including the allocation and release of funds earmarked for various projects.<sup>47</sup> Plainly, the power to allocate and disburse funds is not within the COA’s mandate.

*Payment of the judgment obligation is not exclusively from the sale of NPC’s assets*

PSALM maintains that the amount to be paid under the judgment obligation should be exclusively from the sale of NPC assets. This contention is unmeritorious.

Neither the EPIRA, its IRR, or the Court’s issuances in G.R. No. 156208 supports this argument. The Court postulated:

Lastly, We held that PSALM’s assets may be subject of the execution of this case. We explained that under the EPIRA, PSALM shall assume all of NPC’s existing generation assets, liabilities, IPP contracts, real estate, and other disposable assets. **It would be unfair and unjust if PSALM gets nearly all of NPC’s assets but will not pay for liabilities incurred by NPC during the privatization stage.** Further, there was a **transfer of interest** over these assets by operation of law. **These properties may be used to satisfy the judgment.**<sup>48</sup> (Emphases in the original.)

The use of “may” dispels PSALM’s contention that only such assets may be used to satisfy the judgment. To sustain PSALM’s viewpoint is to allow it to skirt its responsibilities on a technicality.

Further, the Court has found that PSALM is statutorily obligated to settled NPC’s existing liabilities. Sec. 49 of EPIRA states that PSALM takes ownership of NPC’s “generation assets, **liabilities**, IPP contracts, real estate and all other disposable assets.” To satisfy these liabilities, Sec. 50 authorizes PSALM to “to manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded

<sup>47</sup> *Lawyers Against Monopoly and Poverty v. Secretary of Budget and Management*, 686 Phil. 357, 375–376 (2012) [Per J. Mendoza, *En Banc*].

<sup>48</sup> *NPC Drivers and Mechanics Association v. National Power Corp.*, 821 Phil. 62, 71 (2017) [Per J. Leonardo-De Castro, *En Banc*].



contract costs in an optimal manner.”

Additionally, the Court explained that the judgment obligation is not affected by Section 4, Rule 33 of the EPIRA IRR, which provides that the “funds necessary to cover the separation pay” of all NPC employees displaced as a result of the restructuring plan, shall be provided either by the Government Service Insurance System (GSIS) or from the NPC's corporate funds” since, after privatization, the NPC's corporate funds are largely within PSALM's control.<sup>49</sup>

As to PSALM's argument that the payment of legal interest should be subject to availability of funds, the Court reiterates that the award of legal interest is a “natural consequence of a final judgment and is not defeated notwithstanding the fact that the parties were at variance in the computation of what is [due] under the judgment.”<sup>50</sup>

To recall, in G.R. No. 156208, the Court ruled that legal interest in this case shall be computed as follows: (1) 12% per annum *from* October 8, 2008, *until* June 30, 2013; and (2) 6% per annum *from* July 1, 2013 onwards.

Thus, the payment of legal interest is not optional, nor can it be made to depend on the availability of funds.

*Benefits included in the backwages to  
be paid have already been determined  
by the Court*

Again, the Court has painstakingly laid down the benefits to which the terminated claimants are entitled, to wit: (a) separation pay in lieu of reinstatement; (b) backwages; (c) wage adjustments; minus any separation pay already received under the restructuring plan.<sup>51</sup> As already quoted above, the Court also specified the guidelines for computing these entitlements, even as it acknowledged that the COA would make the final computation.

Moreover, jurisprudence is replete with cases that provide guidance on how to compute the award for backwages.

The base figure for the computation of backwages should include not only the basic salary but also the regular allowances being received, such as

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<sup>49</sup> *Id.* at 99.

<sup>50</sup> *BPI Employees Union-Metro Manila v. Bank of the Philippine Islands*, 673 Phil. 599, 615 (2011) [Per J. Del Castillo, First Division] *citing* *Equitable Banking Corp. v. Sadac*, 523 Phil. 781-829 (2006) [Per J. Chico-Nazario, First Division].

<sup>51</sup> *NPC Drivers and Mechanics Association v. National Power Corp.*, 821 Phil. 62, 104-105 (2017) [Per J. Leonardo-De Castro, *En Banc*].

the emergency living allowances and the 13th month pay mandated by the law.<sup>52</sup> In addition, the Court, in *Dumapis v. Lepanto Consolidated Mining Co.*,<sup>53</sup> clarified the conflicting rulings on the inclusions in the computation for backwages, to wit:

Verily, the Court now ordains the uniform rule that the award of backwages and/or separation pay due to illegally dismissed employees shall include all salary increases and benefits granted under the law and other government issuances, Collective Bargaining Agreements, employment contracts, established company policies and practices, and analogous sources which the employees would have been entitled to had they not been illegally dismissed. On the other hand, salary increases and other benefits which are contingent or dependent on variables such as an employee's merit increase based on performance or longevity or the company's financial status shall not be included in the award.<sup>54</sup>

The foregoing should provide enough direction for the computation of backwages in this case.

*NPC should turn over to COA all relevant documents for verification and computation of claims*

In its October 20, 2014 Resolution, the Court directed the NPC to submit a list with the following information:

- a. Employee's full name;
- b. Date of hire;
- c. Position as of date of hire;
- d. Date of actual termination under NPB Resolution Nos. 2002-124 and 2002-125;
- e. Position as of date of actual termination under NPB Resolution Nos. 2002-124 and 2002-125;
- f. Salary as of last date of actual termination;
- g. Separation pay that the employee *is entitled to* under the approved separation pay program;
- h. Date of receipt of separation pay;
- i. Amount of separation pay received;
- j. Wage adjustments and other benefits that the employee *is entitled to* from the date of actual termination until September 14, 2007;
- k. Wage adjustments and other benefits that the employee *has received* from the date of actual termination until September 14, 2007;
- l. Date of re-hire by the NPC, the PSALM, or the TRANSCO, if any;
- m. Position as of date of re-hire by the NPC, the PSALM, or the TRANSCO, if any;

<sup>52</sup> *United Coconut Chemicals, Inc. v. Valmores*, 813 Phil. 685, 698 (2017) [Per J. Bersamin, Third Division].

<sup>53</sup> *Dumapis v. Lepanto Consolidated Mining Co.*, 884 Phil. 156 (2020) [Per J. Lazaro- Javier, *En Banc*].

<sup>54</sup> *Id.* at 180.



- n. Salary as of date of re-hire by the NPC, the PSALM, or the TRANSCO, if any;
- o. Subsequent position/s in the NPC, the PSALM, or the TRANSCO as a result of personnel actions after the date of re-hire;
- p. Date of release of appointment papers in the subsequent position/s;
- q. Salary in the subsequent position/s;
- r. Date of actual termination in the NPC, the PSALM, or the TRANSCO, if any;
- s. Separation pay that the employee *is entitled to* under the approved separation pay program;
- t. Amount of separation pay received; and
- u. Date of receipt of separation pay.

While NPC complied with the directive, the Court also acknowledged that the list is subject to COA's validation and audit procedures.

In the present Petition, PSALM asserts that the entitlement of each claimant should be supported by sufficient proof of their entitlement. It claims that it does not have access to relevant information on NPC's former employees and may only coordinate with the NPC on the matter. Consequently, it has no means to verify the claims. Thus, it prays that the NPC be directed to provide the relevant documentation to the COA.

Under the Government Auditing Code of the Philippines,<sup>55</sup> claims against government funds shall be supported with complete documentation.<sup>56</sup> It is, therefore, imperative that the COA has the complete and relevant documents in order to compute the judgment awards. Without such documentation, the COA will not be able to make the proper computation of the claims. Accordingly, the NPC is directed to submit to the COA all relevant documents, including employment records, of the judgment claimants, for verification of claims and proper computation of their entitlement.

### Conclusion

It is emphasized that the Constitution vests the broadest latitude in the COA in its discharge of its role as the guardian of public funds and properties.<sup>57</sup> Thus, the Court generally sustains the COA's decisions or orders, in deference to its expertise in the implementation of the laws it is tasked to enforce. Only when the COA clearly acted without or in excess of jurisdiction amounting to grave abuse of discretion, will the Court step in.<sup>58</sup>

<sup>55</sup> Presidential Decree No. 1445, 11 June 1978. < <https://www.coa.gov.ph/download/2300/presidential-decree-no-1445-government-auditing-code-of-the-philippines/468/presidential-decree-no-1445-government-auditing-code-of-the-philippines.pdf> > Last accessed January 10, 2025.

<sup>56</sup> Sec. 4 (6) of Presidential Decree No. 1445.

<sup>57</sup> *Miralles v. Commission on Audit*, 818 Phil. 380, 389 (2017) [Per J. Bersamin, *En Banc*].

<sup>58</sup> *Gregorio v. Commission on Audit*, 875 Phil. 758, 767 (2020) [Per J. Carandang, *En Banc*].

In these consolidated cases, the Court finds that both petitioners and PSALM have failed to establish that the assailed COA Decision was tainted with grave abuse of discretion. Consequently, the Petitions must fail.

**FOR THESE REASONS**, the Petition in G.R. No. 253395 is **DISMISSED** for being filed out of time and for lack of merit. The Petition in G.R. No. 253967 is also **DISMISSED** for lack of merit. The Decision No. 2019-416 dated September 23, 2019 of the Commission on Audit in COA Case No. 2018-285 is **AFFIRMED**.

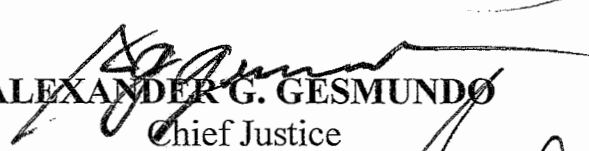
The National Power Corporation is **ORDERED** to turn over to the Commission on Audit all relevant documents, including employment records, of the judgment claimants, for verification of claims and proper computation of their entitlement.


**SO ORDERED.**

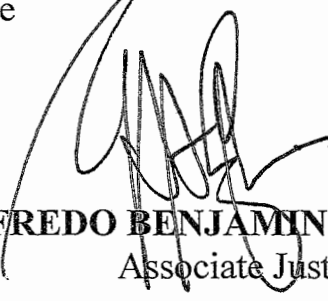


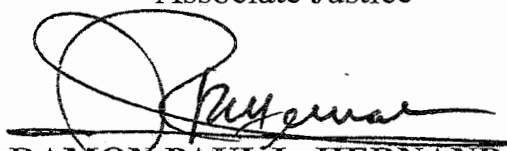
**RODIL V. ZALAMEDA**  
Associate Justice

**WE CONCUR:**


  
**ALEXANDER G. GESMUNDO**  
Chief Justice

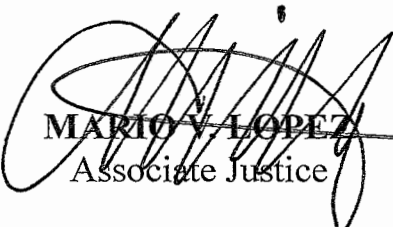
  
**MARVIC M. V. F. LEONEN**  
Associate Justice

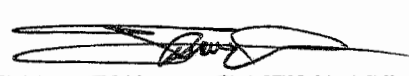
  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

  
**RAMON PAUL L. HERNANDO**  
Associate Justice


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

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


  
**MARIO V. LOPEZ**  
Associate Justice


  
**SAMUEL H. GAERLAN**  
Associate Justice

  
**RICARDO R. ROSARIO**  
Associate Justice

  
**JHOSEP V. LOPEZ**  
Associate Justice

  
**JAPAR B. DIMAAMPAO**  
Associate Justice

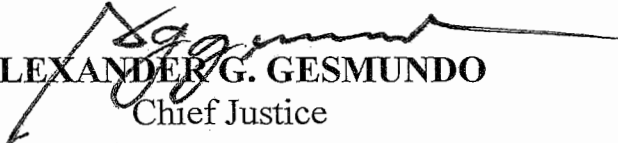
  
**JOSE MIDAS P. MARQUEZ**  
Associate Justice

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

(On Leave)  
**MARIA FILOMENA D. SINGH**  
Associate Justice

**CERTIFICATION**

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



**ALEXANDER G. GESMUNDO**  
Chief Justice

