Republic of the Philippines
Supreme Court
Manila

EN BANC

REPUBLIC OF THE PHILIPPINES, represented by the OFFICE OF THE SOLICITOR GENERAL (OSG) as the PEOPLE'S TRIBUNE, and the NATIONAL POWER BOARD,
Petitioners,

-versus-

HON. LUISITO G. CORTEZ, Presiding Judge, Regional Trial Court, Branch 84, Quezon City, ABNER P. ELERIA, MELITO B. LUPANGCO, NAPOCOR EMPLOYEES CONSOLIDATED UNION (NECU), and NAPOCOR EMPLOYEES AND WORKERS UNION (NEWU)
Respondents.

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G.R. No. 187257

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ROLANDO G. ANDAYA, in his capacity as Secretary of the Department of Budget and Management and member of the Board of Directors of the National Power Corporation,
Petitioners,

-versus-

G.R. No. 187776

Present:

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
PERALTA,*
BERSAMIN,
DEL CASTILLO,

* No part.

HON. LUISITO G. CORTEZ, Presiding Judge, Regional Trial Court, Branch 84, Quezon City, ABNER P. ELERIA, MELITO B. LUPANGCO, NAPOCOR EMPLOYEES CONSOLIDATED UNION and NAPOCOR EMPLOYEES AND WORKERS UNION,

Respondents.

MENDOZA,** REYES, PERLAS-BERNABE, LEONEN, JARDELEZA,*** and CAGUIOA,**** *JJ.*

Promulgated:

February 7, 2017

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DECISION

LEONEN, *J.*:

The implementation of Republic Act No. 6758 resulted in the integration of all allowances previously received, including Cost of Living Allowance and Amelioration Allowance, into the basic standardized salary. When a government entity ceases to be covered by Republic Act No. 6758, the new position classification and compensation plan must also include all allowances previously received in the basic salary, in line with the principle of non-diminution of pay.

This is a consolidated case resulting from a Petition for Mandamus filed by the president of the National Power Corporation Employees Consolidated Union (NECU) and the president of the National Power Corporation Employees and Workers Union (NEWU) before the Regional Trial Court, Branch 84, Quezon City.[1] The Petition sought to direct the National Power Corporation (NAPOCOR), its President and its Board of Directors to release and pay the Cost of Living Allowance (COLA) and Amelioration Allowance (AA) to all NAPOCOR employees beginning July 1, 1989 to March 16, 1999.[2] The Petition for Mandamus was granted by the trial court and the NAPOCOR was ordered to pay a total of ₱6,496,055,339.98 as back payment for COLA and AA with an additional ₱704,777,508.60 as legal interest.[3]

** No part.
*** No part.
**** On leave.
1 *Rollo* (G.R. No. 187257), p. 1531, Regional Trial Court Decision in Civil Case No. Q-07-61728.
2 Id.
3 Id. at 1552.

NAPOCOR was created under Commonwealth Act No. 120[4] as a government-owned and controlled corporation. Under the law, its National Power Board was authorized to fix the compensation of its officers and employees.[5]

In 1976, a salary standardization and compensation plan for public employees, including that of government-owned and controlled corporations, was enacted through Presidential Decree No. 985.[6] The Decree likewise provided that notwithstanding the standardization and compensation plan, additional incentives may be established by government-owned and controlled corporations from their corporate funds.[7] Pursuant to the Decree, then President Ferdinand E. Marcos issued Letter of Implementation No. 97,[8] granting additional financial incentives to employees of government-owned and controlled corporation performing critical functions, among which was NAPOCOR.[9] The additional incentives included COLA and AA.[10]

On August 21, 1989, Congress enacted Republic Act No. 6758, or the Compensation and Position Classification Act of 1989, to standardize compensation and benefits of public employees, effective July 1, 1989.[11] The law applied to all positions, whether appointive or elective, including those in government-owned and controlled corporations.[12] The law also provided that all allowances and other additional compensation not

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4 An Act Creating the "National Power Corporation," Prescribing its Powers and Activities, Appropriating the Necessary Funds Therefor, and Reserving the Unappropriated Public Waters for its Use (1936).

5 Com. Act No. 120 (1936), sec. 5 provides:

. . . .

The duties and powers as well as the compensation of the said officers and employees shall be such as may be defined and prescribed or fixed by the National Power Board: Provided, That no additional compensation shall be given to any officer or employee of the Commonwealth or any of its political subdivisions or of any public or semi-public corporation, who may be designated to perform additional duties in the Corporation[.]

6 A Decree Revising the Position Classification and Compensation Systems in the National Government, and Integrating the Same (1976).

7 Pres. Decree No. 985 (1976), sec. 2 provides:

Section 2. Declaration of Policy. It is hereby declared to be the policy of the national government to provide equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions. In determining rates of pay, due regard shall be given to, among others, prevailing rates in private industry for comparable work. For this purpose, there is hereby established a system of compensation standardization and position classification in the national government for all departments, bureaus, agencies, and offices including government-owned or controlled corporations and financial institutions: *Provided, That notwithstanding a standardized salary system established for all employees, additional financial incentives may be established by government corporation and financial institutions for their employees to be supported fully from their corporate funds and for such technical positions as may be approved by the President in critical government agencies.* (Emphasis supplied)

8 Authorizing the Implementation of Standard Compensation and Position Classification Plans for the Infrastructure/Utilities Group of Government Owned or Controlled Corporations (1979).

9 *See* L.O. Impl. No. 97, second whereas clause and no. 1(b).

10 *Rollo* (G.R. No. 187257), p. 1569, Notice of Position Allocation and Salary Adjustment.

11 Rep. Act No. 6758 (1989), sec. 23.

12 *See* Rep. Act No. 6758 (1989), sec. 4.

otherwise stated "shall be deemed included"[13] in the prescribed standardized salary rates. Section 12 reads:

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

On October 2, 1989, the Department of Budget and Management issued Corporate Compensation Circular No. 10 (DBM-CCC No. 10),[14] which provided for the integration of COLA, AA, and other allowances into the standardized salaries of public employees effective November 1, 1989.[15]

On April 5, 1993, Congress enacted Republic Act No. 7648, or the Electric Power Crisis Act of 1993, allowing the President of the Philippines to upgrade the compensation of NAPOCOR employees "at rates comparable to those prevailing in privately-owned power utilities[.]"[16]

Pursuant to Republic Act No. 7648, then President Fidel V. Ramos issued Memorandum Order No. 198[17] providing for a different position classification and compensation plan for NAPOCOR employees to take effect on January 1, 1994.[18]

On August 12, 1998, this Court promulgated *De Jesus v. Commission on Audit*,[19] which found DBM-CCC No. 10 ineffective for lack of

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13 Rep. Act No. 6758 (1989), sec. 12.
14 *Rollo* (G.R. No. 187257), pp. 482–492.
15 *See NAPOCOR Employees Consolidated Union (NECU) v. National Power Corporation (NPC)*, 519 Phil. 372, 377–378 (2006) [Per J. Garcia, En Banc].
16 Rep. Act No. 7648 (1993), sec. 5.
17 Directing and Authorizing the Upgrading of Compensation of Personnel of the National Power Corporation at Rates Comparable with those Prevailing in Privately-Owned Power Utilities and for Other Purposes (1994).
18 Memo. Order No. 198 (1994), sec. 10.
19 355 Phil. 584 (1998) [Per J. Purisima, En Banc].

publication in the Official Gazette or in a newspaper of general circulation.[20] Thus, the circular only became effective on March 16, 1999.[21]

In *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989 v. Commission on Audit*,[22] this Court recognized that the ineffectivity of DBM-CCC No. 10 from July 1, 1989 to March 16, 1999 created a "legal limbo" wherein the COLA and AA were "not effectively integrated into the standardized salaries."[23] Hence, during the period of the legal limbo, affected employees would be entitled to receive the two allowances:

> To stress, the failure to publish DBM-CCC No. 10 meant that the COLA and the amelioration allowance were not effectively integrated into the standardized salaries of the PPA employees as of July 1, 1989. The integration became effective only on March 16, 1999. Thus, in between those two dates, they were still entitled to receive the two allowances.[24]

On December 28, 2007, Abner P. Eleria, president of NECU, and Melito B. Lupanggo, president of NEWU, filed a Petition for Mandamus with the Regional Trial Court of Quezon City, Branch 84, praying that NAPOCOR be ordered to release the COLA and AA due them.[25] NECU and NEWU filed their Motion for Leave of Court to file a Petition-in-Intervention, which was granted by the trial court on March 14, 2008.[26] The trial court consolidated the petitions and treated them as a class suit.[27]

NECU and NEWU alleged that they requested NAPOCOR to release their COLA and AA on March 12, 2006.[28] NAPOCOR subsequently created a Committee[29] "to study . . . the grant of [the] additional allowances[.]"[30]

On May 28, 2007, the Committee issued a Certification that the COLA and AA were not integrated into the salaries of NAPOCOR employees hired from July 1, 1989 to March 16, 1999.[31] NAPOCOR "thereafter referred the matter to the Department of Budget and Management[.]"[32]

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20 Id. at 589–591.

21 *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989 v. Commission on Audit*, 506 Phil. 382, 390–391 (2005) [Per Acting C.J. Panganiban, En Banc].

22 506 Phil. 382 (2005) [Per Acting C.J. Panganiban, En Banc].

23 Id. at 389.

24 Id. at 390.

25 *Rollo* (G.R. No. 187257), p. 1531, Regional Trial Court Decision in Civil Case No. Q-07-61728.

26 Id.

27 Id.

28 Id. at 1532.

29 Id. The Committee was composed of the President, Vice President of Human Resources and Finance, General Counsel, and Senior Department Managers of Human Resources and Internal Audit.

30 Id.

31 Id.

32 Id.

On September 18, 2007, then Secretary of Budget and Management Rolando Andaya, Jr. (Secretary Andaya, Jr.) wrote a letter to NAPOCOR stating that the determination of whether the COLA and AA were factually integrated rested with it since the payment of the allowances did not require the prior approval of the Budget and Management Secretary.[33]

NECU and NEWU again requested the release of their COLA and AA pursuant to Secretary Andaya, Jr.'s letter. NAPOCOR again referred the matter to the Committee for further study. Due to the continued refusal of NAPOCOR to release the allowances, NECU and NEWU were constrained to file the Petition for Mandamus.[34]

In its Consolidated Comment before the trial court, the Office of the Solicitor General, on behalf of NAPOCOR, alleged that the Notice of Position Allocation and Salary Adjustment (NPASA) of employees should be examined to find out if the COLA and AA were nevertheless integrated into the salaries despite the ineffectivity of DBM-CCC No. 10. The affected employees must also show that they suffered a diminution of pay as a result of its implementation. The Office of the Solicitor General likewise pointed out that the COLA and AA were not among those allowances specifically excluded in Section 12 of Republic Act No. 6758 and thus were deemed to have been included in the standardized salary rates.[35]

In their Reply with Motion for Judgment on the Pleadings before the trial court, NECU and NEWU submitted the following documents to prove right to COLA and AA:

> a. Letter of [NPC President] Del Callar dated October 9, 2007 categorizing the workers/employees of the NAPOCOR into three groups, viz:
>
> a.1 NPC employees who were incumbent as of June 30, 1989 are no longer entitled to their COLA and AA from July 1, 1989 to December 31, 1993 since said allowances have been factually integrated into their salaries but entitled to COLA and AA from January 1, 1994 to March 15, 1999;
>
> a.2 NPC employees hired between July 1, 1989 and December 31, 1993 are entitled to COLA and AA since said benefits were not factually integrated into their salaries from their date of employment up to March 15, 1999; and
>
> a.3 NPC employees as of January 1, 1994 to March 15, 1999 are entitled to COLA and AA from their date of employment up to March 15, 1999.
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> b. Certification issued by Mr. Alexander P. Japon, NPC's Senior Finance Department Manager dated April 22, 2008 admitting its obligation to pay COLAs and AAs due the NPC

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33 Id.
34 Id.
35 Id. at 1533–1534.

> workers/employees as well as certifying the availability of funds in the amount of P8.5 Billion for the purpose and pursuant to DBM CCC No. 12; and
>
> c. Letter of [NPC President] Del Callar dated April 23, 2008 to the NAPOCOR Board certifying the NPC stand to pay the COLA and AA to the workers/employees.[36] (Citations omitted)

The Office of the Solicitor General filed an Omnibus Motion seeking to withdraw its appearance as counsel for NAPOCOR and asking for leave to intervene as the People's Tribune. The Motion stated that the position taken by NAPOCOR ran counter to the Office of the Solicitor General's stand that the COLA and AA were already integrated into the standardized salaries.[37]

The Department of Budget and Management likewise submitted a Supplemental Comment to the trial court, arguing that the COLA and AA were already integrated into the standardized salary rates, as shown in their Notice of Position Allocation and Salary Adjustment.[38] It further posited that *De Jesus* only applied in instances where the integration of allowance was by "mere legal fiction"[39] and that *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989* was similarly inapplicable since there was already a factual integration of allowances.[40] It likewise pointed out that the new compensation plan for NAPOCOR employees did not include the grant of additional COLA and AA and that the 2008 General Appropriations Act prohibited the use of savings for additional COLA and AA.[41] It maintained that the test to the entitlement of additional allowances was whether there was a diminution of pay as a result of the law's implementation and that mandamus only lied "where there is a clear legal right sought to be enforced."[42]

On November 28, 2008, the Regional Trial Court rendered its Decision[43] in favor of NECU and NEWU. According to the trial court, the determination of whether the COLA and AA had been factually integrated was already resolved when the NAPOCOR Committee certified that the COLA and AA of the employees from July 1, 1989 to December 31, 1993 were not factually integrated into their standardized salaries.[44] The trial court also cited *De Jesus*, *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989*, and *Metropolitan Waterworks and Sewerage*

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36 Id. at 1534.
37 Id. at 1535.
38 Id. at 1537.
39 Id.
40 Id. at 1538.
41 Id.
42 Id.
43 Id. at 1530–1553. The Decision was penned by Presiding Judge Luisito G. Cortez.
44 Id. at 1542.

System v. Bautista, et al.[45] in support of the conclusion that the employees were entitled to COLA and AA from 1989 to 1999 as a matter of right.[46] The dispositive portion of the Decision reads:

> **WHEREFORE**, in the light of the foregoing considerations, judgment is hereby rendered in favor of the petitioners and intervenors NECU & NEWU and against the respondents National Power Corporation, its President and Board of Directors ordering them as follows:
>
> 1. To **RELEASE and to PAY** the amount of **SIX BILLION FOUR HUNDRED NINETY SIX MILLION FIFTY-FIVE THOUSAND THREE HUNDRED THIRTY NINE PESOS AND NINETY-EIGHT CENTAVOS [Php 6,496,055,339.98]**, Philippine Currency representing the COLAs and AAs and **TO PAY** the amount of **SEVEN HUNDRED FOUR MILLION SEVEN HUNDRED SEVENTY-SEVEN THOUSAND FIVE HUNDRED EIGHT HUNDERED** (sic) **PESOS AND SIXTY CENTAVOS [Php 704,777,508.60]**, Philippine Currency, representing **interest** computed from December 28, 2007, within 30 days from finality of this Decision to petitioners, intervenors and other non-union employees similarly situated.
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> The said monetary judgment shall earn another interest of **12%** per annum from date of finality of the decision until its full satisfaction.
>
> 2. To **PAY** Attorney's fees in the amount of **P100,000.00** in favor of the Petitioners and **P200,000.00** in favor of the Intervenors NECU & NEWU;
>
> 3. To **DEDUCT** the amount of **ONE HU[N]DRED FORTY-FIVE MILLION FOUR HUNDRED SIXTY-FOUR THOUSAND EIGHT HUNDRED SEVENTY-TWO PESOS AND FIFTY-FIVE CENTAVOS [Php 145,464,872.55]** representing the **deficiency payment of docket and other legal fees** to be taken from the said lists of NAPOCOR officials, workers, and employees including non-union beneficiaries similarly situated, and to **REMIT AND PAY** the same to the Office of the Clerk of Court of the Regional Trial Court of Quezon City, within 15 days from finality of this Decision, and finally, to **FURNISH** this court proof of compliance hereof. The said Amount shall be without prejudice and subject to the final computation and assessment of the Office of the Clerk of Court. The said docket and legal fees shall be a lien on this judgment and **shall be first satisfied** pursuant to the provisions of Rule 141 and Rule 39 of the Rules of Court.

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[45] 572 Phil. 383 (2008) [Per J. R. T. Reyes, Third Division].

[46] *Rollo* (G.R. No. 187257), p. 1544, Regional Trial Court Decision in Civil Case No. Q-07-61728.

> 4. **DECLARING** the Consultancy Agreement to be valid and binding between the counsels and the Petitioners and the Intervenors NECU & NEWU, and its members.
>
> 4.1 To **DEDUCT the FIVE** percent (**5%**) of the amount payable to each of the NAPOCOR employees including non-union beneficiaries similarly situated for the said attorney's fees PRO RATA, **AND** to **PAY** the amount deducted to Atty. Napoleon Uy Galit and Atty. Jonathan S. Presquito, after deducting the appropriate taxes.
>
> **SO ORDERED.**[47] (Emphasis and underscoring in the original, citation omitted)

The Office of the Solicitor General filed a Notice of Appeal of this Decision.[48] Secretary Andaya, Jr. also filed a Motion for Reconsideration, arguing, among others, that the employees were duly notified that their COLA and AA were already integrated into their standardized salaries and that a Certification could be used as basis since this was merely advisory for the Board of Directors.[49] NECU and NEWU, on the other hand, filed an Urgent Motion for Execution even within the period for appeal alleging that the needed amount had already been certified available and that the release of the allowances did not require the approval of the Department of Budget and Management.[50]

In a Joint Order[51] dated March 20, 2009, the Regional Trial Court denied the Notice of Appeal and Motion for Reconsideration; and granted the Motion for Execution.[52]

The trial court noted that since the Office of the Solicitor General withdrew its appearance as counsel for NAPOCOR and entered its appearance as the People's Tribune, it could no longer file an appeal that would accrue to NAPOCOR's benefit.[53] The trial court also reiterated that the Committee Certification was approved by the NAPOCOR President and was included in NAPOCOR's Certified Obligation from 2001 to 2007. As a Certified Obligation submitted to Congress, its funds were already earmarked for the payment of the obligation.[54]

The trial court likewise found that the Motion for Execution could be granted since NAPOCOR could set aside the funds needed for the payment

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47 Id. at 1552–1553.
48 Id. at 1515, Regional Trial Court Joint Order in Civil Case No. Q-07-61728.
49 Id. at 1515 and 1519.
50 Id. at 1515–1517 and 1519.
51 Id. at 1515–1529. The Joint Order was penned by Presiding Judge Luisito G. Cortez.
52 Id. at 1527–1528.
53 Id. at 1522.
54 Id. at 1523–1524.

of the COLA and AA. Its payment would not only redound to the benefit of the affected employees and their families, but also to the economy due to increased consumer spending. The National Treasury could also benefit from the tax remittances due from these allowances.[55] The dispositive portion of the Joint Order reads:

> **WHEREFORE**, in the light of the foregoing considerations, the Court resolves as follows, viz:
>
> 1. **GRANTS** the **Motion for Execution** filed by NPC workers, petitioners and intervenors NECU & NEWU.
>
> Accordingly, the Branch Clerk of Court is **directed** to forthwith issue the **Certificate of Finality of Judgment** and the **Writ of Execution** to enforce the Court's Decision dated November 28, 2008.
>
> Let the corresponding Writ of Execution be issued and served simultaneous with the service of this Order to the parties to be implemented by the deputy sheriff of this Court.
>
> The initial computation of filing fees amounting to **ONE HUNDRED FORTY-FIVE MILLION FOUR HUNDRED SIXTY FOUR THOUSAND EIGHT HUNDRED SEVENTY-TWO PESOS AND FIFTY-FIVE CENTAVOS, [Php 145,464, 872.55], Philippine Currency, SHALL be first executed and paid** to the Clerk of Court of RTC Quezon City, pursuant to the provisions of Rule 141 of the Revised Rules of Court, to be eventually remitted to the account of the Supreme Court.
>
> 2. **GRANTS** the motion of petitioners and intervenors to Deposit the Amount Equivalent to Judgment Award and Interest.
>
> Accordingly, **ORDERS** the **NPC Management** through its **President, NPC BOARD, and Treasurer to DEPOSIT the amount of SIX BILLION FOUR HUNDRED NINETY SIX MILLION FIFTY-FIVE THOUSAND THREE HUNDRED THIRTY NINE PESOS AND NINETY EIGHT CENTAVOS [Php 6,496,055,339.98], Philippine Currency** representing the COLAs and AAs, and **the amount of SEVEN HUNDRED FOUR MILLION SEVEN HUNDRED SEVENTY SEVEN THOUSAND FIVE HUNDRED EIGHT PESOS AND SIXTY CENTAVOS (Php 704,777,508.60), Philippine Currency, representing interest** computed from December 28, 2007, with Land Bank of the Philippines, with high yielding bearing interest, **within 30 days from receipt hereof**.

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[55] Id. at 1526–1527.

> **Thereafter, to SUBMIT their COMPLIANCE hereto within 15 days from date of deposit of said amounts for the information of the Court.**
>
> The said amount shall be under *Custodia Legis* of the Court pending its distribution to the listed and qualified beneficiaries or pending appeal with the Higher Court.
>
> 3. **DENIES and DISMISSES** the **Notice of Appeal** filed by the Office of the Solicitor General for utter lack of merit.
>
> 4. **DENIES** the Motion for Reconsideration filed by the Public Respondent Hon. Rolando G. Andaya, Jr. with finality.
>
> SO ORDERED.[56]

On March 23, 2009, the trial court issued a Certificate of Finality of Judgment[57] and a Writ of Execution.[58]

Aggrieved, the Office of the Solicitor General, acting as the People's Tribune filed a Petition for Certiorari and Prohibition (With Urgent Prayer for the Immediate Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction),[59] docketed by this Court as **G.R. No. 187257**.

The Department of Budget and Management, through then Secretary Andaya, Jr., also filed a Motion for Reconsideration of the Joint Order dated March 20, 2009 and a Motion to Quash the Writ of Execution dated March 23, 2009.[60] While the Motions were pending before the trial court, the Department of Budget and Management filed a Petition for Certiorari and Prohibition[61] with this Court, docketed as **G.R. No. 187776**.

On April 14, 2009, the Office of the Solicitor General filed a Very Urgent Plea for a Temporary Restraining Order[62] to enjoin the implementation of the trial court's November 28, 2008 Decision, March 20, 2009 Joint Order, and March 23, 2009 Writ of Execution.

In a Resolution[63] dated April 15, 2009, this Court issued a Temporary Restraining Order[64] to enjoin the implementation of the Writ of Execution.

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56 Id. at 1527–1528.
57 Id. at 1560–1563.
58 Id. at 1554–1557.
59 Id. at 7–68.
60 *Rollo* (G.R. No. 187776), pp. 3–4, Petition for Certiorari and Prohibition.
61 Id. at 2–42.
62 *Rollo* (G.R. No. 187257), pp. 576–579.
63 Id. at 581–582.
64 Id. at 583–585.

On April 21, 2009, NECU and NEWU filed a Petition[65] before this Court, docketed as **G.R. No. 187359**, seeking to restrain the implementation and enforcement of the Operations and Maintenance Agreement entered into by NAPOCOR and Power Sector Assets and Liabilities Management (PSALM).[66] The Petition alleged that certain provisions of the Agreement regarding the remittance of NAPOCOR's revenues to PSALM was an attempt to thwart the execution of the trial court's November 28, 2008 Decision.[67]

Another Petition[68] was filed by the Power Generation Employees Association-NPC (PGEA-NPC), seeking to restrain the implementation of the Operations and Maintenance Agreement, arguing that the Agreement contravened the provisions of Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001.[69] This Petition was docketed as **G.R. No. 187420**.[70]

In the Resolution[71] dated July 13, 2009, this Court consolidated G.R. No. 187359 with G.R. Nos. 187257 and 187776. Upon motion of the Office of the Solicitor General, this Court, in the Resolution[72] dated September 9, 2009 also consolidated G.R. No. 187420 with these cases.

On February 17, 2011, NECU and NEWU filed an Omnibus Motion[73] seeking to withdraw the Petition in G.R. No. 187359 and to detach the petition from G.R. No. 187420 and have it consolidated instead with G.R. No. 156208,[74] a case then pending on the extent by which PSALM would answer for NAPOCOR's liabilities.

In a Resolution[75] dated June 22, 2011, the Court granted the Motion to Withdraw the Petition in G.R. No. 187359 but denied the prayer to have G.R. No. 187420 consolidated with G.R. No. 156208. The Court then considered G.R. No. 187359 as closed and terminated.[76]

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65 *Rollo* (G.R. No 187359), pp. 3–59.
66 Id. at 55.
67 Id. at 48–55.
68 *Rollo* (G.R. No. 187420), pp. 3–34.
69 Id. at 4.
70 Id. at 3.
71 *Rollo* (G.R. No. 187776), pp. 149–150.
72 *Rollo* (G.R. No. 187257), pp. 1115-A–1115-B.
73 *Rollo* (G.R. No. 187359), pp. 645–651.
74 Id. at 649. G.R. No. 156208 is entitled *NPC Drivers and Mechanics Association, et al. v. National Power Corporation, et al.*
75 *Rollo* (G.R. No. 187257), pp. 1581–1582.
76 Id. at 1582.

On March 10, 2014, this Court, in the Resolution[77] resolving the motion of NECU and NEWU,[78] deconsolidated G.R. No. 187420 from G.R. Nos. 187257 and 187776. Thus, only the Petitions in **G.R. Nos. 187257 and 187776** are to be resolved in this Decision.

Procedural

Whether the Regional Trial Court committed grave abuse of discretion in dismissing the Notice of Appeal filed by the Office of the Solicitor General as the People's Tribune.

Whether the appeals were timely filed as to bar the finality of the Decision dated November 28, 2008.

Whether the case presented pure issues of law that should have been appealed directly to this Court through a petition for review under Rule 45 of the Rules of Court.

Whether the trial court erred in deciding the case based on a judgment on the pleadings.

Substantive

Whether NAPOCOR employees are entitled to the payment of their COLA and AA from the period of July 1, 1989 to March 16, 1999.

Whether the COLA and AA were already deemed factually integrated into the standardized salaries pursuant to Section 12 of Republic Act No. 6758.

Whether the COLA and AA were already integrated into the standardized salaries pursuant to the New Compensation Plan for NAPOCOR employees in Republic Act No. 7648 and Memorandum No. 198, series of 1994.

Whether the trial court violated the Constitution when it ordered NAPOCOR to back pay COLA and AA from its corporate funds.

Procedural Issues

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77 *Rollo* (G.R. No. 187776), pp. 428–429.
78 Id. at 422–425.

The Office of the Solicitor General maintains that it filed its Notice of Appeal before the trial court as the People's Tribune with the authority and duty to uphold the best interests of the State.[79] Although it was initially tasked with representing the NAPOCOR and its Board of Directors, it withdrew as counsel.[80] The trial court also granted its motion for leave to intervene as the People's Tribune, so it had standing to file its own petition on its "perceived best interest of the State."[81]

The Office of the Solicitor General argues that its Notice of Appeal was timely filed and thus, the trial court had the ministerial duty to give due course to it.[82] It also pointed out that the trial court's November 28, 2008 Decision had not yet attained finality since the Writ of Execution was issued by the trial court on March 23, 2009, merely three calendar days after it issued its Joint Order on March 20, 2009.[83]

The Department of Budget and Management likewise points out that the issuance of a Writ of Execution was premature since it still had a fresh 15-day period within which to appeal the Decision when its Motion for Reconsideration was denied by the trial court in its March 20, 2009 Joint Order.[84] It also agrees that the Office of the Solicitor General had standing to file a Notice of Appeal as the People's Tribune.[85] It avers that the Regional Trial Court should not have decided mainly on the pleadings since the case raises several substantive issues.[86]

NECU and NEWU, on the other hand, insist that the Notice of Appeal was correctly denied since the case only presented pure issues of law, which required a direct resort to this Court under Rule 45 of the Rules of Court.[87] They also contend that the Department of Budget and Management's Motion for Reconsideration was correctly denied since it did not contain a notice of hearing.[88] Since the appeal was not perfected, there was no bar to the Decision attaining finality.[89] They argue that a judgment on the pleadings was proper since the facts were undisputed.[90]

NECU and NEWU further claim that the Office of the Solicitor General, as the People's Tribune, "should realize that upon the 16,000 workers' lawful and legitimate demand to their long withheld wages, the 80

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79 *Rollo* (G.R. No. 187257), p. 1314, Office of the Solicitor General's Memorandum.
80 Id.
81 Id. at 1315.
82 Id. at 1317.
83 Id. at 1321–1322.
84 Id. at 1504, Department of Budget and Management's Memorandum.
85 Id. at 1506.
86 Id. at 1502–1503.
87 Id. at 1387, Workers' Consolidated Memorandum.
88 Id. at 1392.
89 Id. at 1390.
90 Id. at 1382–1383.

million Filipinos are behind them in this honorable quest."[91] They argue that the Department of Budget and Management has no standing to appeal since it is the Secretary of the Department, who is designated as a member of the NAPOCOR Board of Directors. They point out that then Secretary Andaya, Jr. instructed NAPOCOR "to proceed [with the] payment of the workers[']' COLA/AA from its Corporate Funds."[92]

Substantive Issues

The Office of the Solicitor General contends that Section 12[93] of Republic Act No. 6758 already integrated all allowances into standardized salary rates, including the COLA and AA since these allowances were not specifically mentioned in the exempted allowances under the law.[94] It cites *Gutierrez, et al. v. Department of Budget and Management, et al.*,[95] promulgated after *De Jesus, Philippine Ports Authority (PPA) Employees Hired After July 1, 1989*, and *Metropolitan Waterworks and Sewerage System*, wherein this Court stated that the COLA was already deemed integrated into the standardized salary rates of public employees.[96]

The Office of the Solicitor General argues that the Certification of NAPOCOR's Board was not binding since it did not specify the premise of its conclusion that the COLA and the AA were not factually integrated and the persons who certified the document stood to benefit from the certification.[97] It cites *NAPOCOR Employees Consolidated Union (NECU) v. National Power Corporation (NPC)*,[98] wherein this Court used the Notice of Position Allocation and Salary Adjustment to conclude that the employee welfare allowance was already deemed factually integrated into the standardized salary rates.[99] It claims that *De Jesus, Philippine Ports Authority (PPA) Employees Hired After July 1, 1989*, and *Metropolitan Waterworks and Sewerage System* were inapplicable since *NAPOCOR Employees Consolidated Union (NECU)* already clarified that the non-

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91 Id. at 1417.

92 Id. at 1393.

93 Rep. Act No. 6758 (1989), sec. 12 provides:
Section 12. Consolidation of Allowances and Compensation. - All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.
Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

94 *Rollo* (G.R. No. 187257), pp. 1293–1294, Office of the Solicitor General's Memorandum.

95 630 Phil. 1, 16–17 (2010) [Per J. Abad, En Banc].

96 *Rollo* (G.R. No. 187257), pp. 1294–1295, Office of the Solicitor General's Memorandum.

97 Id. at 1296.

98 519 Phil. 372, 384–387 (2006) [Per J. Garcia, En Banc].

99 *Rollo* (G.R. No. 187257), pp. 1299–1302, Office of the Solicitor General's Memorandum.

publication of DBM-CCC No. 10 did not render ineffective Section 12 of Republic Act No. 6758.[100] The Office of the Solicitor General also points out that the back pay of COLA and AA in addition to the standardized salary was an "additional compensation that [was] prohibited by the Constitution[.]"[101]

The Department of Budget and Management echoes the Office of the Solicitor General's argument that the COLA and AA were already deemed factually integrated into the standardized salary rates as shown in its Notice of Position Allocation and Salary Adjustment.[102] It presents the 1992 notices of several employees, where it was clearly stated that the COLA and AA were received in addition to their salaries and other benefits.[103] Also submitted is a Memorandum from the Office of the General Counsel of NAPOCOR, stating that the employees actually received their COLA and AA from July 1, 1989 to August 31, 1992 and that these allowances were deemed factually integrated into their salaries from September 1992 to December 31, 1993.[104]

The Department of Budget and Management maintains that the New Compensation Plan pursuant to Republic Act No. 7648 and Memorandum No. 198, series of 1994 did not authorize the grant of additional COLA and AA from January 1, 1994.[105] The law provided that only the President of the Philippines could upgrade the compensation of the employees; thus, only those allowances in the compensation plan could be modified by the NAPOCOR Board of Directors.[106] It points out that NECU and NEWU have not shown "any evidence of diminution [of] pay to justify their claim for additional COLA and AA[,]"[107] as required by this Court in *NAPOCOR Employees Consolidated Union (NECU)*.[108]

The Department of Budget and Management also argues that the trial court violated the Constitution when it ordered NAPOCOR to pay the COLA and AA from its corporate funds without the required appropriation for that purpose.[109] It alleges that Executive Order No. 518, series of 1979 requires that government-owned and controlled corporations prepare their Corporate Operating Budgets to obligate the amounts used for its operations and "serves [as] the appropriation[s] cover for the utilization of corporate funds[.]"[110] When the NAPOCOR officers were asked specifically where in their Corporate Operating Budget the payment of COLA and AA would be

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100 Id. at 1306–1311.
101 Id. at 1311–1313.
102 Id. at 1484–1488, Department of Budget and Management's Memorandum.
103 Id. at 1488–1490.
104 Id. at 1491.
105 Id. at 1494–1495.
106 Id. at 1495–1496.
107 Id. at 1496.
108 Id. at 1496–1498.
109 Id. at 1499–1502.
110 Id. at 1499.

included, they stated that it "was not included in the [Corporate Operating Budget] approved by Congress."[111] Despite lacking the requisite Congressional approval, the trial court still ordered the NAPOCOR officials the release of the corporate funds, in direct contravention to the Constitution.[112]

NECU and NEWU, on the other hand, maintain that *De Jesus*, *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989*, and *Metropolitan Waterworks and Sewerage System* have all decreed that they were entitled to their COLA and AA from July 1, 1989 to March 16, 1999.[113] The Office of the Solicitor General is trying to confuse the issue by citing *NAPOCOR Employees Consolidated Union (NECU)*, which concerned the employee welfare fund allowance, and not the COLA and AA.[114] They also point out that the Office of the Solicitor General "selectively"[115] chose the three Notices of Position Allocation and Salary Adjustment instead of subpoenaing the notices of all the workers.[116] They insist that Memorandum No. 198, series of 1994 did not include the COLA and AA on the presumption that DBM-CCC No. 10 was still in effect.[117] They also argue that the funds to be used to pay are the corporate funds of the NAPOCOR, which could be subject to garnishment.[118]

I

Generally, the Office of the Solicitor General "represent[s] the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers."[119]

The exception to this rule is when it acts as the "People's Tribune." As such, it represents the best interests of the State, and may take an adverse position from the government agency under litigation. In *Pimentel, Jr. v. Commission on Elections*:[120]

> True, the Solicitor General is mandated to represent the Government, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. However, the Solicitor General may, as it has in instances take a position adverse and contrary to that of the Government on the

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111 Id. at 1500.
112 Id. at 1500–1502.
113 Id. at 1378, Workers' Consolidated Memorandum.
114 Id. at 1380–1381.
115 Id. at 1446, Workers' Supplemental/Reply Memorandum.
116 Id. at 1445–1446.
117 Id. at 1458.
118 Id. at 1416–1417, Workers' Consolidated Memorandum.
119 1987 ADM. CODE (1987), book IV, title III, chap. 12, sec. 35.
120 352 Phil. 424 (1998) [Per J. Kapunan, En Banc].

> reasoning that it is incumbent upon him to present to the court what he considers would legally uphold the best interest of the government although it may run counter to a client's position.[121]

The rationale for the Solicitor General's role is further explained in *Gonzales v. Hon. Chavez*:[122]

> Indeed, in the final analysis, it is the Filipino people as a collectivity that constitutes the Republic of the Philippines. Thus, the distinguished client of the OSG is the people themselves of which the individual lawyers in said office are a part.
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> . . . .
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> Moreover, endowed with a broad perspective that spans the legal interests of virtually the entire government officialdom, the OSG may be expected to transcend the parochial concerns of a particular client agency and instead, promote and protect the public weal. Given such objectivity, it can discern, metaphorically speaking, the panoply that is the forest and not just the individual trees. Not merely will it strive for a legal victory circumscribed by the narrow interests of the client office or official, but as well, the vast concerns of the sovereign which it is committed to serve.[123]

In this instance, the Office of the Solicitor General initially represented NAPOCOR and its Board of Directors in the proceedings before the Regional Trial Court. It later on filed an Omnibus Motion To Withdraw Appearance as Counsel for Respondents and For Leave to Intervene as People's Tribune,[124] which was granted by the trial court in its June 20, 2008 Order.[125] In denying the Office of the Solicitor General's Notice of Appeal, the trial court stated:

> The Court is of the humble opinion and so holds that OSG has ceased to be the counsel of NPC and the subsequent filing of the notice of appeal is not appropriately filed or such notice will accrue to the benefit of NPC.[126]

In granting the Office of the Solicitor General's Omnibus Motion, the trial court allowed a party, separate from NAPOCOR – the People's Tribune — to enter its appearance in the case. As with any other party, it was allowed to file a Notice of Appeal separately from NAPOCOR. Its Notice of Appeal was not for the benefit of NAPOCOR; rather, it was for the

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[121] Id. at 431–432, *citing* Pres. Decree No. 478 (1974), sec. 1, 1987 ADM. CODE, book IV, title III, chap. 12, sec. 35, *Sec. Orbos of the Department of Transportation and Communications v. Civil Service Commission*, 267 Phil. 476, 483–484 (1990) [Per J. Gancayco, En Banc], *Martinez v. Court of Appeals*, 307 Phil. 592, 601 (1994) [Per C.J. Narvasa, Second Division].

[122] 282 Phil. 858 (1992) [Per J. Romero, En Banc].

[123] Id. at 889–891.

[124] *Rollo* (G.R. No. 187257), p. 1535, Regional Trial Court Decision in Civil Case No. Q-07-61728.

[125] Id. at 1522, Regional Trial Court Joint Order in Civil Case No. Q-07-61728.

[126] Id.

protection of the interests of the State. Its Notice of Appeal would have been timely filed.

A similar issue was raised regarding the Department of Budget and Management's standing to file a Motion for Reconsideration of the November 28, 2008 Decision.

The case was brought against NAPOCOR and its Board of Directors, which included the Secretary of Budget and Management.[127] All members of the Board were served a copy of the petition before the trial court but only then Secretary Andaya, Jr. filed his Comment.[128] Thus, when he filed a Motion for Reconsideration of the trial court's Decision, it was "as a member of the Board of Directors of the [NAPOCOR.]"[129] Being a party to the case, the Secretary of the Budget and Management had standing to file the Motion for Reconsideration.

NECU and NEWU likewise assail Secretary Andaya, Jr.'s Motion for Reconsideration for failing to state a notice of hearing.

Generally, all written motions are required to include a notice of hearing and must be addressed to all parties and served to them at least three (3) days before the date of the hearing.[130] When a party fails to comply, "the running of the period to appeal is not tolled by [the] filing or pendency."[131] This three-day notice rule, however, is not absolute. The motion may still be acted upon by the court "provided doing so will neither cause prejudice to the other party nor violate his or her due process rights."[132]

The trial court in this case nevertheless conducted a hearing on January 23, 2009 and resolved the Motion for Reconsideration on its merits.[133] NECU and NEWU likewise did not allege any violation to their right to due process due to the lack of a notice of hearing. Thus, the filing of

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[127] *See NAPOCOR Employees Consolidated Union (NECU) v. National Power Corporation (NPC)*, 519 Phil. 372, 375 (2006) [Per J. Garcia, En Banc].

[128] *Rollo* (G.R. No. 187257), p. 1536, Regional Trial Court Decision in Civil Case No. Q-07-61728.

[129] Id. at 1515, Regional Trial Court Joint Order in Civil Case No. Q-07-61728.

[130] *See* RULES OF COURT, Rule 15, sec. 4 provides:
RULE 15. Motions
. . . .
SECTION 4. Hearing of Motion. – Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.
Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

[131] *Nuñez v. GSIS Family Bank*, 511 Phil. 735, 747–748 (2005) [Per J. Carpio Morales, Third Division].

[132] *Laude v. Ginez-Jabalde*, G.R. No. 217456, November 24, 2015, 775 SCRA 408, 426 [Per J. Leonen, En Banc].

[133] *Rollo* (G.R. No. 187257), p. 1523, Regional Trial Court Joint Order in Civil Case No. Q-07-61728.

the Motion of Reconsideration was able to toll the running of the period of appeal.

II

The Office of the Solicitor General's appeal required a review of the documentary evidence presented, thus, it was necessary to first file a notice of appeal with the trial court under Rule 41 of the Rules of Court. A direct appeal with this Court through a petition for review under Rule 45 of the Rules of Court would have been dismissed outright for presenting questions of fact.

There are three modes of appeal from a decision or final order from the Regional Trial Court. The first mode is an ordinary appeal to the Court of Appeals in cases decided by the trial court in the exercise of its original jurisdiction. This is done by filing a notice of appeal with the trial court.[134] The second mode is through a petition for review with the Court of Appeals in cases decided in the exercise of the trial court's appellate jurisdiction.[135] The third mode is by filing a petition for review on certiorari with this Court if the appeal involves only questions of law.[136]

Only the third mode of appeal limits the scope of the issues to be brought. The first and second modes of appeal thus involve appeals where there are both questions of law and of fact. The test used to determine whether there is a question of fact or of law "is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact."[137]

By filing a Notice of Appeal, the Office of the Solicitor General intended to appeal to the Court of Appeals via an ordinary appeal under Rule 41, sec. 1 (a). NECU and NEWU questioned this mode of appeal on the ground that only questions of law were presented.

The Office of the Solicitor General's main argument, however, was that the COLA and AA were already *factually* integrated into the

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[134] RULES OF COURT, Rule 41, sec. 2(a).

[135] RULES OF COURT, Rule 41, sec. 2(b) and Rule 42, sec. 1.

[136] RULES OF COURT, Rule 41, sec. 2(c) and Rule 45, sec. 1.

[137] *Republic v. Malabanan, et al.*, 646 Phil. 631, 638 (2010) [Per J. Villarama, Jr., Third Division], *citing Leoncio, et al. v. Vera, et al.*, 569 Phil. 512, 516 (2008) [Per J. Nachura, Third Division], *which cited Binay v. Odeña*, 551 Phil. 681, 689 (2007) [Per J. Nachura, En Banc] and *Velayo-Fong v. Spouses Velayo*, 539 Phil. 377, 386–387 (2006) [Per J. Austria-Martinez, First Division]. *See also Century Iron Works, Inc., et al. v. Bañas*, 711 Phil. 576, 585–586 (2013) [Per J. Brion, Second Division] and *Tongonan Holdings and Development Corporation v. Atty. Escaño, Jr.*, 672 Phil. 747, 756 (2011) [Per J. Mendoza, Third Division].

standardized salary rates of NAPOCOR's employees. It had intended this fact to be established by documentary evidence such as the Notice of Position Allocation and Salary Adjustment. NECU and NEWU likewise presented documentary evidence before the trial court to establish their position. In order to review any appeal of the case, it would have been necessary to review the weight and evidentiary value of the documents presented. These would have been questions of fact better addressed in an ordinary appeal before the Court of Appeals.

The Office of the Solicitor General, thus, did not err in first filing a notice of appeal before the Regional Trial Court.

III

Considering that the Office of the Solicitor General represented an adverse position, a judgment on the pleadings was improper in this instance.

A judgment on the pleadings may be allowed in cases "[w]here an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading[.]"[138] NECU and NEWU's documentary evidence consisted of documents by the NAPOCOR Board of Directors stating that the employees were entitled to the back pay of their COLA and AA. Thus, the Regional Trial Court concluded that since the NAPOCOR admitted the material allegations of the complaint, a judgment on the pleadings was proper.[139]

The trial court, however, operated on the mistaken assumption that the Office of the Solicitor General represented NAPOCOR. At this point in the proceedings, the Office of the Solicitor General had already withdrawn its appearance as counsel for NAPOCOR and entered its appearance as the People's Tribune.[140] In presenting an adverse position, the Office of the Solicitor General could not be deemed to have admitted the material allegations of the complaint.

IV

COLA and AA are already deemed integrated into the standardized salaries of the NAPOCOR employees from July 1, 1989 to December 31, 1993.

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[138] RULES OF COURT, Rule 34, sec. 1.

[139] *Rollo* (G.R. No. 187257), pp. 1542–1543, Regional Trial Court Decision in Civil Case No. Q-07-61728.

[140] Id. at 1535–1536. The OSG filed its Motion To Withdraw as Counsel for Respondents and For Leave to Intervene as the People's Tribune on June 11, 2008. It filed its Comment/Opposition to the Motion for Judgment on the Pleadings on June 12, 2008.

Before the enactment of Republic Act No. 6758, previous compensation and position classification laws, such as Presidential Decree No. 985, as amended by Presidential Decree No. 1597,[141] only granted allowances and fringe benefits upon the recommendation of the Commissioner of Budget and the approval of the President of the Philippines.[142] Republic Act No. 6758 aimed "to standardize salary rates among government personnel and do away with multiple allowances and other incentive packages and the resulting differences in compensation among them."[143] Thus, Section 12 of Republic Act No. 6758 introduced the concept of integration of allowance upon the standardization of the salary rates.[144] Section 12 states:

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

As a general rule, "all allowances are deemed included in the standardized salary [rates]."[145] The following allowances, however, are deemed *not* to have been integrated:

> ...representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM...[146]

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141 Further Rationalizing the System of Compensation and Position Classification in the National Government (1978).

142 Pres. Decree No. 1597 (1978), sec. 5.

143 *Ambros v. Commission on Audit*, 501 Phil. 255, 279 (2005) [Per J. Callejo, Sr., En Banc].

144 *See Maritime Industry Authority v. Commission on Audit*, G.R. No. 185812, January 13, 2015, 745 SCRA 300, 319 [Per J. Leonen, En Banc].

145 *Maritime Industry Authority v. Commission on Audit*, G.R. No. 185812, January 13, 2015, 745 SCRA 300, 321 [Per J. Leonen, En Banc].

146 Rep. Act No. 6758 (1989), sec. 12.

The phrase "such other additional compensation not otherwise specified herein as may be determined by the DBM" specifies that the Department of Budget and Management has the delegated authority to determine other allowances that are not deemed integrated into the standardized salaries.[147] The Department of Budget and Management subsequently issued DBM-CCC No. 10, enumerating all allowances deemed included in the basic salary and discontinuing all allowances and fringe benefits granted on top of the basic salary.[148] Item 4.1 states:

> 4.1 The present salary of an incumbent for purposes of this Circular shall refer to the sum total of actual basic salary including allowances enumerated hereunder, being received as of June 30, 1989 and authorized pursuant to P.D. No. 985 and other legislative or administrative issuances:
>
> 4.1.1 Cost-of-Living Allowance/Bank Equity Pay (COLA/BEP) equivalent to forty percent (40%) of basic salary or P300.00 per month, whichever is higher;
>
> 4.1.2 Amelioration Allowance equivalent to ten percent (10%) of basic salary of P150.00 per month, whichever is higher;
>
> 4.1.3 COLA guaranteed to GOCCs/GFIs covered by the Compensation and Position Classification Plan for the regular agencies/offices of the National Government and to GOCCs/GFIs following the Compensation and Position Classification Plan under LOImp. No. 104/CCC No. 1 and LOImp.No. 97/CCC No. 2 in the amount of P550.00 per month for those whose monthly basic salary is P1,500 and below, and P500 for those whose monthly basic salary is P1,501 and above, granted on top of the COLA/BEP mentioned in Item No. 4.1.1 above[.][149]

Item No. 5.6 of the Circular states:

> Payment of other allowances/fringe benefits and all other forms of compensation granted on top of basic salary, whether in cash or in kind, . . . shall be discontinued effective November 1, 1989. Payment made for such allowances/fringe benefits after said date shall be considered as illegal disbursement of public funds.[150]

In *De Jesus*, the Commission on Audit disallowed the payment of honoraria to employees of the Local Water Utilities Administration on the ground that this was a fringe benefit granted on top of the basic salary.[151]

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147 *See Maritime Industry Authority v. Commission on Audit*, G.R. No. 185812, January 13, 2015, 745 SCRA 300, 334–335 [Per J. Leonen, En Banc].

148 *De Jesus v. Commission on Audit*, 355 Phil. 584, 587 (1998) [Per J. Purisima, En Banc].

149 *Rollo* (G.R. No. 187257), p. 483, Department of Budget and Management Corporate Compensation Circular No. 10.

150 *De Jesus v. Commission on Audit*, 355 Phil. 584, 587 (1998) [Per J. Purisima, En Banc].

151 Id.

This Court, however, set aside the disallowance and rendered DBM-CCC No. 10 ineffective for non-publication in the Official Gazette or in a newspaper of general circulation:

> [I]t is decisively clear that DBM-CCC No. 10, which completely disallows payment of allowances and other additional compensation to government officials and employees, starting November 1, 1989, is not a mere interpretative or internal regulation. It is something more than that. And why not, when it tends to deprive government workers of their allowances and additional compensation sorely needed to keep body and soul together. At the very least, before the said circular under attack may be permitted to substantially reduce their income, the government officials and employees concerned should be apprised and alerted by the publication of subject circular in the Official Gazette or in a newspaper of general circulation in the Philippines — to the end that they be given amplest opportunity to voice out whatever opposition they may have, and to ventilate their stance on the matter. This approach is more in keeping with democratic precepts and rudiments of fairness and transparency.
>
> In light of the foregoing disquisition on the ineffectiveness of DBM-CCC No. 10 due to its non-publication in the Official Gazette or in a newspaper of general circulation in the country, as required by law, resolution of the other issue at bar is unnecessary.[152]

In *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989*, the Philippine Ports Authority had been paying its officials and employees COLA and AA prior to the issuance of DBM-CCC No. 10.[153] Upon the issuance of the Circular, it discontinued the payment of these allowances as these were already deemed integrated into the standardized salaries.[154] *De Jesus*, however, rendered the Circular ineffective for non-publication. Thus, a question arose as to whether the employees were entitled to the back pay of their COLA and AA.

This Court held that since the Philippine Port Authority has already granted these allowances to its employees, the employees should continue to receive them during the period of ineffectivity of DBM-CCC No. 10:

> The parties fail to cite any law barring the continuation of the grant of the COLA and the amelioration allowance during the period when DBM-CCC No. 10 was in legal limbo.
>
> The present case should be distinguished from *PNB v. Palma*, in which the respondents sought by mandamus to compel the petitioner therein to grant them certain fringe benefits and allowances that continued to be given to Philippine National Bank (PNB) employees hired prior to July 1, 1989. This Court held that PNB could not be compelled to do so,

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152 Id. at 590–591.

153 *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989 v. Commission on Audit*, 506 Phil. 382, 385 (2005) [Per Acting C.J. Panganiban, En Banc].

154 Id.

> because the respondents had been hired after that date. Under Section 12 of RA 6758, only "incumbent" government employees (as of July 1, 1989) already receiving those benefits may continue to receive them, apart from their standardized pay.
>
> In the present case, the PPA already granted herein petitioners the COLA and the amelioration allowances, even if they were hired after July 1, 1989. The only issue is whether they should have continued to receive the benefits during the period of the "ineffectivity" of DBC-CCC No. 10; that is, from July 1, 1989 to March 16, 1999, the period during which those allowances were not deemed integrated into their standard salary rates. Furthermore, in the *PNB* Decision, the employees claimed a right to receive the allowances from July 1, 1989 to January 1, 1997. PNB was able to grant the benefits post facto, because on that date (January 1, 1997) it had already been privatized and was thus no longer subject to the restrictions imposed by RA 6758 (the Salary Standardization Law).
>
> Tellingly, the subject matter of the *PNB* case involved benefits that had not been deemed integrated into, but in fact exempted from, the standardized salary rates. In the present case, the subject matter refers to those deemed included, but were placed "in limbo" as a result of this Court's ruling in *De Jesus v. COA*.
>
> To stress, the failure to publish DBM-CCC No. 10 meant that the COLA and the amelioration allowance were not effectively integrated into the standardized salaries of the PPA employees as of July 1, 1989. The integration became effective only on March 16, 1999. Thus, in between those two dates, they were still entitled to receive the two allowances.[155]

Thus, *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989* clarified that those who were already receiving COLA and AA as of July 1, 1989, **but whose receipt was discontinued due to the issuance of DBM-CCC No. 10, were entitled to receive such allowances during the period of the Circular's ineffectivity, or from July 1, 1989 to March 16, 1999. The same factual premise was present in *Metropolitan Waterworks and Sewerage System*, wherein this Court reiterated that those already receiving COLA as of July 1, 1989 were entitled to its payment from 1989 to 1999.**[156]

In neither of these cases did this Court suggest that the compensation of the employees after the promulgation of Republic Act No. 6758 would be **increased** with the addition of the COLA and AA. If the total compensation package were the same, then clearly the COLA or AA, or both were **factually** integrated.

NECU and NEWU anchor their entitlement to the back pay of COLA and AA from July 1, 1989 to March 16, 1999 on these three cases. It is

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[155] Id. at 389–390, *citing Philippine National Bank v. Palma*, 503 Phil. 917 (2005) [Per J. Panganiban, Third Division].

[156] *Metropolitan Waterworks and Sewerage System v. Bautista, et al.*, 572 Phil. 383, 403–407 (2008) [Per J. R. T. Reyes, Third Division].

necessary to examine first if the officers and employees of the NAPOCOR were already receiving COLA and AA from July 1, 1989 and whether their receipt of these allowances were discontinued due to the issuance of DBM-CCC No. 10.

In *NAPOCOR Employees Consolidated Union (NECU)*, this Court was confronted with the issue of whether the employees' welfare allowance was deemed integrated into the standardized salaries of the NAPOCOR employees.[157] In holding that the employee welfare allowance was already deemed integrated, this Court also found that the NAPOCOR employees were already receiving COLA and AA prior to the effectivity of Republic Act No. 6758:

> The State aims in Rep. Act No. 6758 to provide equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions. Prior to the effectivity of that law, NPC employees were receiving, aside from cost of living allowance, myriad of allowances like social amelioration allowance, emergency allowance, longevity pay and employee welfare allowance.[158] (Citation omitted)

NAPOCOR Employees Consolidated Union (NECU) also clarifies that *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989* was inapplicable since it only applied to back pay of COLA and AA that was previously withheld and not to those who continued to receive these benefits even after the issuance of DBM-CCC No. 10:

> The Court has, to be sure, taken stock of its recent ruling in *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989 vs. Commission on Audit*. Sadly, however, our pronouncement therein is not on all fours applicable owing to differing factual milieu. There, the Commission on Audit allowed the payment of back cost of living allowance (COLA) and amelioration allowance previously withheld from PPA employees pursuant to the heretofore ineffective DBM-CCC No. 10, but limited the back payment only to incumbents as of July 1, 1989 who were already then receiving both allowances. COA considered the COLA and amelioration allowance of PPA employees as "not integrated" within the purview of the second sentence of Section 12 of Rep. Act No. 6758, which, according to COA confines the payment of "not integrated" benefits only to July 1, 1989 incumbents already enjoying said allowances.
>
> In setting aside COA's ruling, we held in *PPA Employees* that there was no basis to use the elements of incumbency and prior receipt as standards to discriminate against the petitioners therein. For, DBM –CCC No. 10, upon which the incumbency and prior receipt requirements are contextually predicated, was in legal limbo from July 1, 1989 (effective date of the unpublished DBM-CCC No. 10) to March 16, 1999 (date of

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[157] *NAPOCOR Employees Consolidated Union (NECU) v. National Power Corporation (NPC)*, 519 Phil. 372, 382 (2006) [Per J. Garcia, En Banc].

[158] Id. at 383.

> effectivity of the heretofore unpublished DBM circular). And being in legal limbo, the benefits otherwise covered by the circular, if properly published, were likewise in legal limbo as they cannot be classified either as effectively integrated or not integrated benefits.
>
> There lies the difference.
>
> Here, the employee welfare allowance was, as above demonstrated, integrated by NPC into the employees' standardized salary rates effective July 1, 1989 pursuant to Rep. Act No. 6758. Unlike in *PPA Employees*, the element of discrimination between incumbents as of July 1, 1989 and those joining the force thereafter is not obtaining in this case. And while after July 1, 1989, PPA employees can rightfully complain about the discontinuance of payment of COLA and amelioration allowance effected due to the incumbency and prior receipt requirements set forth in DBM-CCC No[.] 10, NPC cannot do likewise with respect to their welfare allowance since NPC has, for all intents and purposes, never really discontinued the payment thereof.[159] (Citation omitted)

Republic Act No. 6758 remained effective during the period of ineffectivity of DBM-CCC No. 10.[160] Thus, the COLA and AA of NAPOCOR officers and employees were integrated into the standardized salaries effective July 1, 1989 pursuant to Section 12 of Republic Act No. 6758, which provides:

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

Unlike in *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989*, there would be no basis to distinguish between those hired before July 1, 1989 and those hired after July 1, 1989. Both sets of NAPOCOR employees were continuously receiving their COLA and AA since these allowances were already factually integrated into the standardized salaries pursuant to Section 12 of Republic Act No. 6758.

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[159] Id. at 388–389.

[160] *See NAPOCOR Employees Consolidated Union (NECU) v. National Power Corporation (NPC)*, 519 Phil. 372, 382 (2006) [Per J. Garcia, En Banc].

In order to settle any confusion, we abandon any other interpretation of our ruling in *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989* with regard to the entitlement of the NAPOCOR officers and employees to the back payment of COLA and AA during the period of legal limbo. To grant any back payment of COLA and AA despite their factual integration into the standardized salary would cause salary distortions[161] in the Civil Service. It would also provide unequal protection to those employees whose COLA and AA were proven to have been factually discontinued from the period of Republic Act No. 6758's effectivity.

Generally, abandoned doctrines of this Court are given only prospective effect.[162] However, a strict interpretation of this doctrine, when it causes a breach of a fundamental constitutional right, cannot be countenanced. In this case, it will result in a violation of the equal protection clause of the Constitution.

Furthermore, *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989* only applies if the compensation package of those hired before the effectivity of Republic Act No. 6758 actually decreased; or in the case of those hired after, if they received a lesser compensation package as a result of the deduction of COLA or AA. Neither situation applies in this case.

NECU and NEWU take exception to the application of *NAPOCOR Employees Consolidated Union (NECU)* to this case, arguing that this case involved COLA and AA, and not the employee welfare allowance. NECU and NEWU, however, are arguing on semantics. At its most basic, *NAPOCOR Employees Consolidated Union (NECU)* involved an allowance appearing in the Notices of Position Allocation and Salary Adjustment to have already been integrated into the basic salary. The two allowances involved in this case appear on the same notices.

The prior acts of the parties likewise support the finding that from July 1, 1989 to December 31, 1993, the COLA and AA were already deemed integrated into the basic salary.

On March 20, 2006, the Department of Budget and Management issued Corporate Compensation Circular No. 12,[163] providing the guidelines

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[161] The term "wage distortion" is defined in Rep. Act No. 6727 (1989) as "a situation where an increase in prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical bases of differentiation."

[162] *See Carpio Morales v. Court of Appeals (Sixth Division)*, G.R. Nos. 217126–27, November 10, 2015, 774 SCRA 431 [Per J. Perlas-Bernabe, En Banc], on our abandonment of the condonation doctrine.

[163] *Rollo* (G.R. No. 187257), pp. 507–508.

for implementation of this Court's decisions on the grant of additional allowances to officers and employees of government-owned and controlled corporations and government financial institutions. It stated, in part:

> For employees hired after July 1, 1989 or the effectivity of RA 6758, a finding that the subject allowance was factually integrated into the basic salaries of incumbents as of July 1, 1989 shall mean that said allowances were likewise paid and factually integrated into the basic salaries of those hired after July 1, 1989.
>
> Any finding that the concerned allowance was not factually integrated into the basic salary, and hence, has not been paid, shall be supported by sworn certifications from the President of the concerned GOCC/GFI, its Vice President for Human Resource and Finance, and other relevant officers directly in charge thereof, or officials with equivalent ranks and responsibilities, attesting to the fact that the subject allowance was not factually integrated in the basic salary after accomplishment of the above matrix, and as supported by the foregoing documents.[164]

Pursuant to this Circular, NAPOCOR submitted to the Department of Budget and Management a Certification[165] dated May 28, 2007[166] stating:

> This is to certify that the Cost of Living Allowance (COLA) and Amelioration Allowance (AA) to be paid to the four thousand nine hundred thirteen (4,913) NPC employees hired during the period 01 July 1989 to 31 December 1993 per the attached matrix were not factually integrated in their respective basic salaries for the subject period.
>
> This is to further certify that the COLA and AA to be paid to the nine thousand seven hundred seventy-seven (9,777) NPC employees concerned during the period 01 January 1994 to 16 March 1999 have not been factually integrated into the basic salaries of the subject employees.
>
> Attached herewith is the accomplished matrix prescribed under DBM CCC # 12, which forms an integral part of this certification.[167]

The Department of Budget and Management, through Secretary Andaya, Jr., wrote a letter[168] dated September 18, 2007 concerning the submission of these documents, stating:

> Based on CCC No. 12, determination of whether such allowances authorized by the Supreme Court to be granted have factually been integrated or not and paid to the NPC employees concerned now rests with the NPC management. The documents enumerated under paragraph 2.1 to 2.4 of said Circular shall serve as basis for determining whether their officials and employees are still entitled to payment of such allowances. It

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164 Id. at 508.
165 Id. at 673.
166 Id. The date refers to the date of notarization.
167 Id.
168 Id. at 680–681.

may be noted that CCC No. 12 does not require GOCCs/GFIs to submit the said documents to the Department of Budget and Management. Likewise, payment of such allowances does not require prior approval of the DBM Secretary.

The findings of the NPC as to who are entitled to payment of back COLA and AA can only be possible after a diligent and exhaustive review and evaluation of all pertinent documents enumerated in CCC No. 12. May we call your attention, however, to the following[:]

a) NPC employees who were incumbents of positions as of June 30, 1989 are no longer entitled to COLA and AA for the period July 1, 1989 to December 31, 1993 since said allowances have been factually integrated into the standardized salaries as clearly reflected in a Notice of Position Allocation and Salary Adjustment (NPASA) of an employee submitted by NPC in connection with the En banc decision of the Supreme Court in the case NAPOCOR EMPLOYEES CONSOLIDATED UNION[,] et al. vs. THE NATIONAL POWER CORPORATION, et al. under G.R. No. 157492 dated March 10, 2006. As reflected in the said NPASA, not only the Welfare Allowance was integrated, but likewise the COLA and Amelioration Allowance being claimed by the NPC employees.

b) For employees hired between July 1, 1989 and December 31, 1993, it is inconceivable that NPC was not aware of the Implementation of RA No. 6758. The SSL had already been in effect on July 1, 1989 and as such, the hiring rate under the SSL should have been allowed to NPC employees hired effective the said period. NPC could not have continuously and separately granted any COLA and AA to those hired effective July 1, 1989 and thereafter.

c) It may also be worth mentioning that in CY 1994, NPC adopted a new Salary Pay [sic] pursuant to RA No. 7643, the Energy Power Crisis Act, as implemented by Memorandum Order (MO) 198. Under the said Salary Plan, the COLA and AA are no longer subsisting and these have already been integrated into the standardized salary of employees effective July 1, 1989.[169]

In a letter[170] dated October 9, 2007, President Cyril C. del Callar (President del Callar) conceded Secretary Andaya, Jr.'s first point but took exception to the second and third point:

[W]e would like to make some clarifications on the following concerns made on our request:

a) NPC employees who were incumbents of positions as of June 30, 1989 are no longer entitled to COLA and AA for the period July 1, 1989 to December 31, 1993 since said allowances have been factually integrated into the

[169] Id.
[170] Id. at 678–679.

standardized rates as reflected in a NPASA of an employee submitted by NPC in connection with the En banc decision of the Supreme Court ..... by NPC employees..

Your position on item a) above is the same with our position as stated in our letter of 10 May 2007. NPC employees who were incumbents of positions as of 30 June 1989 may not be entitled to COLA and AA because during the period 01 July 1989 to 31 December 1993, these employees either actually received such benefits or the said benefits were already factually integrated into their respective standardized salaries.

Attached are copies of pay slips of employees who were incumbents as of 30 June 1989 to illustrate that their COLA and AA were integrated into their standardized salaries during the covered period.

b) For employees hired between July 1, 1989 and December 31, 1993, it is inconceivable that NPC was not aware of the implementation of RA No. 6758. The SSL had already been in effect on July 1, 1989 and as such, the hiring rate under the SSL should have been allowed to NPC employees hired effective the said period. NPC could not have continuously and separately granted any COLA and AA to those hired effective July 1, 1989 and thereafter.

NPC is very much aware of the implementation of RA 6758 and that the SSL took effect on 01 July 1989. However, we would like to remind you that CCC No. 10 was declared ineffective by the Supreme Court due to its non-publication in the Official Gazette in the case of De Jesus, et al. vs. COA (294 SCRA 152). In the case of Philippine Ports Authority Employees vs. COA (GR No. 160396, September 6, 2005), the High Court ruled that the failure to publish DBM-CCC No. 10 meant that the COLA and AA were not effectively integrated into the standardized salaries. It was further ruled that "All – not only incumbents as of July 1, 1989 – should be allowed to receive back pay corresponding to the said benefits, from July 1, 1989 to the new effectivity of DBM-CCC No. 10 - - March 16, 1999.

Attached for your reference are copies of pay slips of NPC employees hired after the effectivity of the SSL to serve as proof that the subject benefits were not factually integrated into the respective basic salaries of employees hired after June 30, 1989. Being non-incumbents as of 30 June 1989, nothing was integrated into their salaries effective July 1, 1989 or respective dates they were actually employed thereafter. The COLA and AA were not part of the total compensation package they were receiving during the period 01 July 1989 to 31 December 1993.

c) It may also be worth mentioning that in CY 1994, NPC adopted a new Salary Pay [sic] ***pursuant to RA No. 6743*** [sic], ***the Energy Power Crisis Act, as implemented by Memorandum Order (MO) 198. Under the said Salary Plan, the COLA and AA are no longer subsisting and these have***

> ***already been integrated into the standardized salary of employees effective July 1, 1989.***
>
> The new NPC Pay Plan which took effect in 1994 was authorized under Memorandum Order (MO) 198. The salary and benefits level accorded to NPC personnel was aligned with the private sector and was based on the result of the study conducted by SGV. The grant of several existing government-mandated allowances was allowed. However, the COLA and AA were not included in the Schedule of Monthly Allowances due to the belief that DBM-CCC No. 10 was still in effect.[171] (Emphasis in the original)

Unfortunately, the attached Notices of Position Allocation and Salary Adjustment and pay slips only served to prove that from July 1, 1989 to December 31, 1993, the COLA and AA were already deemed integrated into the basic salary. According to the various Notices of Position Allocation and Salary Adjustment[172] submitted to this Court, the receipt of COLA and AA was not discontinued due to the implementation of Republic Act No. 6758. One employee, Ernesto Camagong (Mr. Camagong), was a Plant Equipment Operator, classified as Salary Grade 10:

JOB GRADE: 10 WITH A SALARY AS OF 06/30/89 AS FOLLOWS:	BASIC SALARY	[₱] 3,912.00
	COST OF LIVING ALLOWANCE (COLA)	1,564.80
	ADDITIONAL COLA	200.00
	SOCIAL AMELIORATION ALLOWANCE	391.20
	EMERGENCY ALLOWANCE	255.00
	RED CIRCLE RATE (RCR)	1,592.10
	LONGEVITY PAY	200.00
	EMPLOYEE WELFARE ALLOWANCE	391.20
	T O T A L AS OF 06/30/89	8,506.30
SALARY ADJUSTMENT	EFFECTIVE JULY 1, 1989	NONE
TRANSITION ALLOWANCE	EFFECTIVE JULY 1, 1989	4,120.30
ADJUSTED SALARY	EFFECTIVE JULY 1, 1989	4,386.00
TOTAL COMPENSATION	EFFECTIVE JULY 1, 1989	8,506.30[173]

Prior to Republic Act No. 6758, or on June 30, 1989, Mr. Camagong was receiving a total salary of ₱8,506.30. Upon the effectivity of the law, or

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[171] Id.

[172] Id. at 1569–1571. *NAPOCOR Employees Consolidated Union (NECU) v. National Power Corporation (NPC)*, 519 Phil. 372, 385 (2006) [Per J. Garcia, En Banc] cited the same NPASA in its Decision.

[173] Id. at 1569.

on July 1, 1989, all allowances, except those specifically excluded, were deemed integrated into his basic salary. *To stress, all allowances previously granted were already deemed integrated into the standardized salary rates by July 1, 1989.*

As shown above, Mr. Camagong's adjusted salary of ₱4,386.00 already included all allowances previously received. This amount is obviously less than his previous total compensation of ₱8,506.30. The law, however, provided a remedy in the form of a transition allowance. *NAPOCOR Employees Consolidated Union (NECU)* explains:

> When Rep. Act No. 6758 became effective on July 1, 1989, the new position title of Camagong was Plant Equipment Operator B with a salary grade of 14 and with a monthly salary of ₱4,386.00.
>
> Admittedly, in the case of Camagong, his monthly gross income of ₱8,506.30 prior to the effectivity of Rep. Act No. 6758, was thereafter reduced to only ₱4,386.00. The situation, however, is duly addressed by the law itself. For, while Rep. Act No. 6758 aims at standardizing the salary rates of government employees, yet the legislature has adhered to the policy of non-diminution of pay when it enacted said law. So it is that Section 17 thereof precisely provides for a "transition allowance," as follows:
>
> > Section 17. Salaries of Incumbents. — Incumbents of positions presently receiving salaries and additional compensation/fringe benefits including those absorbed from local government units and other emoluments, the aggregate of which exceeds the standardized salary rate as herein prescribed, shall continue to receive such excess compensation, which shall be referred to as transition allowance. The transition allowance shall be reduced by the amount of salary adjustment that the incumbent shall receive in the future.
> >
> > The transition allowance referred to herein shall be treated as part of the basic salary for purposes of computing retirement pay, year-end bonus and other similar benefits.
> >
> > As basis for computation of the first across-the-board salary adjustment of incumbents with transition allowance, no incumbent who is receiving compensation exceeding the standardized salary rate at the time of the effectivity of this Act, shall be assigned a salary lower than ninety percent (90%) of his present compensation or the standardized salary rate, whichever is higher. Subsequent increases shall be based on the resultant adjusted salary.

Evidently, the transition allowance under the aforequoted provision was purposely meant to bridge the difference in pay between the pre-R.A. 6758 salary of government employees and their standardized pay rates thereafter, and because non-diminution of pay is the governing principle in Rep. Act No. 6758, Camagong, pursuant to Section 17 of that law was

> given a transition allowance of ₱4,120.30. This explains why, in the case of Camagong, his gross monthly income remained at ₱8,506.30, as can be seen in his NPASA, clearly showing that the allowances he used to receive prior to the effectivity of Rep. Act No. 6758, were integrated into his standardized salary rate.[174] (Citation omitted)

The integration of COLA into the standardized salary rates is not repugnant to the law. *Gutierrez, et al. v. Department of Budget and Management, et al.*[175] explains:

> COLA is not in the nature of an allowance intended to reimburse expenses incurred by officials and employees of the government in the performance of their official functions. It is not payment in consideration of the fulfillment of official duty. As defined, cost of living refers to "the level of prices relating to a range of everyday items" or "the cost of purchasing those goods and services which are included in an accepted standard level of consumption." Based on this premise, COLA is a benefit intended to cover increases in the cost of living. Thus, it is and should be integrated into the standardized salary rates.[176]

Thus, it would be incongruous to grant any alleged back pay of COLA and AA from July 1, 1989 to December 31, 1993, when the NAPOCOR officers and employees have already received such allowances for this period. The grant would be tantamount to additional compensation, which is proscribed by Section 8, Article IX (B) of the Constitution:

> SECTION 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.

Mandamus cannot lie to compel the performance of an unconstitutional act.[177] The Regional Trial Court clearly acted in grave abuse of discretion in ordering the back payment, to the affected NAPOCOR officers and employees, the COLA and AA for the period of July 1, 1989 to December 31, 1993.

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[174] *NAPOCOR Employees Consolidated Union (NECU) v. National Power Corporation (NPC)*, 519 Phil. 372, 385–386 (2006) [Per J. Garcia, En Banc], *citing Philippine Ports Authority v. Commission on Audit*, 289 Phil. 266, 274 (1992) [Per J. Gutierrez, Jr., En Banc].

[175] 630 Phil. 1 (2010) [Per J. Abad, En Banc].

[176] Id. at 17, *citing Bureau of Fisheries and Aquatic Resources (BFAR) Employees Union, Regional Office No. VII, Cebu City v. Commission on Audit*, 584 Phil. 132, 140 (2008) [Per C.J. Puno, En Banc], THE NEW OXFORD AMERICAN DICTIONARY (Oxford University Press, 2005), and WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (Merriam-Webster Inc., 1993).

[177] *See* RULES OF COURT, Rule 65, sec. 3 and *NAPOCOR Employees Consolidated Union (NECU) v. National Power Corporation (NPC)*, 519 Phil. 372, 389–390 (2006) [Per J. Garcia, En Banc].

The question remains, however, as to the entitlement of NECU and NEWU to the back pay of COLA and AA from January 1, 1994 to March 16, 1999.

V

The enactment of Republic Act No. 7648, or the Electric Power Crisis Act of 1993 authorized the President of the Philippines to reorganize NAPOCOR and to upgrade its compensation plan. From this period, NAPOCOR ceased to be covered by the standardized salary rates of Republic Act No. 6758.

Pursuant to Republic Act No. 7648, then President Fidel V. Ramos issued Memorandum Order No. 198, providing for a different position classification and compensation plan for NAPOCOR employees to take effect on January 1, 1994. The compensation plan states:

> SEC. 2. COMPENSATION PLAN. The NPC Compensation Plan consists of the following:
>
> 2.1 Total monthly compensation structure as shown in Annex "A" which shall include:
>
> 2.1.1 Monthly basic salary schedule as shown in Annex "B"; and
>
> 2.1.2 Schedule of monthly allowances as provided in Annex "C" which include existing government mandated allowances such as PERA and Additional Compensation, and Rice Subsidy, and Reimbursable Allowances, i.e., RRA, RTA and RDA, provided however, that the NP Board is hereby authorized to further rationalize and/or revise the rates for such allowances as may be necessary; and
>
> 2.2 "Pay for Performance". Pay for Performance is a variable component of the total annual cash compensation consisting of bonuses and incentives but excluding the 13th month pay, earned on the basis of corporate and/or group performance or productivity, following a Productivity Enhancement Program (PEP), and step-increases given in recognition of superior individual performance using a performance rating system, duly approved by the NP Board. The corporate or group productivity or incentive bonus shall range from zero (0) to four (4) months basic salary, to be given in lump-sum for each year covered by the PEP. The in-step increases on the other hand, once granted, shall form part of the monthly basic salary.

Thus, *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989* is inapplicable for the period following the enactment of Republic Act No. 7648. This case interprets provisions of Republic Act No. 6758. The

"legal limbo" contemplated in this case does not apply to a period where a new position classification and compensation plan has already been enacted. Thus, entitlement to the back pay of COLA and AA from 1994 to 1999 should not be premised on this case.

The question as to whether the COLA and AA were deemed integrated in this new compensation plan was the subject of then NAPOCOR President del Callar's letter[178] dated May 10, 2007 to Secretary Andaya, Jr. Secretary Andaya, Jr. replied:

> It may also be worth mentioning that in CY 1994, NPC adopted a new Salary Pay [sic] pursuant to RA No. 6743 [sic], the Energy Power Crisis Act, as implemented by Memorandum Order (MO) 198. Under the said Salary Plan, the COLA and AA are no longer subsisting and these have already been integrated into the standardized salary of employees effective July 1, 1989.[179]

NAPOCOR's Office of the General Counsel disagreed with this assessment, stating that Memorandum Order No. 198, series of 1994 did not include the COLA and AA "presumably due to the belief that DBM-CCC No. 10 was still in effect (the Supreme Court decisions declaring the said Circular as ineffective were not yet promulgated as of that time)."[180] This sentiment was echoed in President del Callar's letter[181] dated October 9, 2007 to Secretary Andaya, Jr.

This statement, however, fails to take into account that DBM-CCC No. 10 implements Republic Act No. 6758,[182] not Republic Act No. 7648. By January 1, 1994, NAPOCOR officers and employees were no longer covered by the standardized salary rates of Republic Act No. 6758. Thus, the effectivity or ineffectivity of DBM-CCC No. 10 from January 1, 1994 is irrelevant.

Memorandum Order No. 198, series of 1994 only includes the basic salary and the following allowances: Personal Economic Relief Allowance (PERA) and Additional Compensation, Rice Subsidy, and Reimbursable Allowances. Republic Act No. 7648 also provides that only the President of the Philippines can upgrade the compensation of NAPOCOR personnel:

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178 *Rollo* (G.R. No. 187257), pp. 1572–1573.

179 Id. at 1575, National Power Corporation President Cyril C. del Callar's letter dated October 9, 2007.

180 Id. at 1577–1578, National Power Corporation's Memorandum dated May 2, 2007.

181 Id. at 1574–1575.

182 Id. at 482. Department of Budget and Management Corporate Compensation Circular No. 10, item 1.0 states:

1.0 PURPOSE

This Circular is being issued in compliance with Section 23 of R.A. No. 6758, entitled, "An Act Prescribing A Revised Compensation and Position Classification System In the Government and For Other Purposes," mandating the Department of Budget and Management (DBM) to prepare and issue the necessary guidelines to implement the mandate of said law within sixty (60) days after its approval.

31, 1993. These allowances need not be separately granted. *All basic salaries by December 31, 1993 already included the COLA and AA.*

Thus, in order to conclude that the NAPOCOR employees were not able to receive their COLA and AA upon the implementation of the New Compensation Plan, it must first be determined whether its implementation resulted in the diminution of their salaries and benefits.

Evidence on record, however, shows that the affected employees suffered no diminution in their compensation upon the implementation of the New Compensation Plan on January 1, 1994.

The pay slips[184] of an employee, Melinda A. Bancolita, from December 1993 to January 1994 are instructive. For the period of December 1 to 7, 1993, she had the position of "SR IRD/IRM OFFICER", and was receiving a total compensation of ₱8,017.40.[185] From January 1 to 7, 1994, she held the same position and was still receiving a total compensation of ₱8,017.40.[186] The pay slips[187] of another employee, Corazon C. San Andres, from this period are similarly instructive. For the period of December 1 to 7, 1993, she held the position of "SECRETARY A," and was receiving a total compensation of ₱3,917.00.[188] From January 1 to 7, 1993, she held the same position and was receiving the same amount of compensation.[189]

Considering there was no diminution in the salaries and benefits of the NAPOCOR employees upon the implementation of the New Compensation Plan, there was no basis for the Regional Trial Court to grant NECU and NEWU's money claims. To repeat, the indiscriminate grant of additional allowances would be tantamount to additional compensation, which is proscribed by Section 8,[190] Article IX (B) of the Constitution.

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184 *Rollo* (G.R. No. 187257), pp. 339–348.
185 Id. at 343.
186 Id. at 344.
187 Id. at 351–359.
188 Id. at 353.
189 Id. at 354.
190 CONST., art. IX(B), sec. 8 provides:
ARTICLE IX. Constitutional Commissions
. . . .
B. The Civil Service Commission
. . . .
SECTION 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.

VI

The Regional Trial Court committed grave abuse of discretion in ordering the immediate execution of its November 28, 2008 Decision even before the lapse of the period for appeal.

Execution issues as a matter of right only "upon the expiration of the period to appeal . . . if no appeal has been duly perfected."[191] The Regional Trial Court denied the Office of the Solicitor General's Notice of Appeal and the Department of Budget and Management's Motion for Reconsideration in the Joint Order dated March 20, 2009. From this date, the parties had 15 days to file an ordinary appeal,[192] a petition for review with the Court of Appeals[193] or a petition for review with the Supreme Court.[194] They also had 60 days to file a petition for certiorari, prohibition, or mandamus with the Court of Appeals or the Supreme Court.[195] Despite these clear periods for appeal, the Regional Trial Court issued a Certificate of Finality of Judgment[196] and a Writ of Execution[197] on March 23, 2009, or a mere three (3) calendar days from the issuance of its Joint Order.

The Regional Trial Court premises its order of finality on the alleged failure of the Office of the Solicitor General, as counsel for NAPOCOR and its Board of Directors, to perfect its appeal.[198] As previously discussed, the Office of the Solicitor General's Notice of Appeal was timely filed. The Regional Trial Court failed to take into account that by the time the Office of the Solicitor General filed its appeal, it ceased to represent NAPOCOR and its Board of Directors. The Decision dated November 28, 2008 should not have been considered final and executory as against the Office of the Solicitor General, acting as the People's Tribune.

Even assuming that the Office of the Solicitor General failed to file a timely appeal, the Department of Budget and Management, through Secretary Andaya, Jr., was able to file its Motion for Reconsideration of the November 28, 2008 Decision. Upon the denial of the Motion, Secretary Andaya, Jr. still had a fresh period within which to appeal the Decision with a higher court. Thus, the November 28, 2008 Decision would not have been

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191 *See* RULES OF COURT, Rule 39, sec. 1, which provides:
RULE 39. Execution, Satisfaction and Effect of Judgments
SECTION 1. Execution Upon Judgments or Final Orders. — Execution shall issue as a matter of right, or motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.

192 *See* RULES OF COURT, Rule 41, sec. 3.

193 *See* RULES OF COURT, Rule 42, sec. 1.

194 *See* RULES OF COURT, Rule 45, sec. 2.

195 *See* RULES OF COURT, Rule 65, sec. 4.

196 *Rollo* (G.R. No. 187257), pp. 1560–1563.

197 Id. at 1554–1556.

198 Id. at 1525, Regional Trial Court Joint Order in Civil Case No. Q-07-61728.

considered final and executory as against the Department of Budget and Management.

The Regional Trial Court likewise found "strong and compelling reasons"[199] for the immediate issuance of its Decision. In particular, it stated that:

> [O]n the basis of the testimonies of the aforementioned key officers of the NPC who categorically stated that NPC had sold and has been selling all its power plants and transmission lines and the proceeds thereof were given to Power Sector Assets and Liabilities Management ["PSA[L]M"] for payment of its obligations to the exclusion of the present COLAs and AAs; that at present, NPC has P400 Million bank deposits but the payment of COLAs and AAs can be sourced from the revenues of generated funds and guaranteed receivables from 58 power customers; that the effect of selling all the NPC's power plants and transmission lines will result to lesser future income that cannot meet the present judgment award. That if ordered by the Court, the management can set aside funds based on the present generated income revenues where NPC has been receiving P10 Billion per month from the present 58 customers.[200] (Citation omitted)

The preparation of corporate operating budgets of government-owned and controlled corporations is governed by Executive Order No. 518, series of 1979.[201] Through Republic Act No. 7638,[202] NAPOCOR was placed under the supervision of the Department of Energy, and their corporate operating budgets were submitted to Congress for approval.[203]

An examination of the testimony the Regional Trial Court relied on reveals that the corporate officers attempted to mask the back payment of additional COLA and AA as a Certified Obligation, to avoid scrutiny by Congress:

> COURT: Can you explain to the Court what does the administration or management of National Power Corporation, as certified obligation insofar as this matter is concerned?

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199 Id. at 1526.

200 Id.

201 Establishing a Procedure for the Preparation and Approval of the Operating Budgets of Government Owned or Controlled Corporations (1979).

202 Department of Energy Act of 1992.

203 *See* Rep. Act No. 7638, chap. III, sec. 13 provides:
CHAPTER III. ATTACHED AGENCIES AND CORPORATIONS
Section 13. Attached Agencies and Corporations. – The Philippine National Oil Company (PNOC), the National Power Corporation (NPC), and the National Electrification Administration (NEA) are hereby placed under the supervision of the Department, but shall continue to perform their respective functions insofar as they are not inconsistent with this Act. *Their annual budget shall be submitted to Congress for approval.* The Secretary shall, in a concurrent capacity, be the ex officio chairman of the respective boards of the PNOC, NPC, and NEA, unless otherwise directed by the President: Provided, That in no case shall the Secretary be the chief executive officer or chief operating officer of the said agencies or their subsidiaries, any law to the contrary notwithstanding. (Emphasis supplied)

[NPC VP EDMUNDO ANGULUAN]: No, your Honor, what we do is we advise the finance to include this in our certified obligation at the end of the year. That should be the case.

COURT: Are you telling to the Court that this obligation amounting to P6,496,055,339.98 plus 2 billion estimated amount of back COLA for those persons who claimed their salary thru disbursement voucher were included in the year 2005 of certified obligation?

A: Yes, your Honor.

COURT: *So what happened after the same has been submitted in Congress, was it approved by Congress?*

A: *It is only internal to us, your Honor, the inclusion of the certified obligation submitted to the Finance is internal to the NPC and this has been carried on for two (2) [years]. Because during the first year, we were not successful in getting paid of the cost of living so we included it again in the C.O.*

COURT: So, when it is included as certified obligation, can you please explain to the Court in a common parlance, what did the corporation do insofar as this obligations are concerned? Am I correct to say or to state that as a certified obligation that seems to be that the NPC or the management recognized this proposition will be due and payable?

A: Yes, your Honor.

COURT: Does it also mean that as certified obligation they are now earmarking portion of their funds for the payments of this obligation?

A: Yes, your Honor.[204] (Emphasis supplied, citation omitted)

It should be noted that the corporate officers of NAPOCOR, including Vice President Anguluan, also stand to benefit from the back payment of any additional COLA and AA.

In any case, the back payment of any compensation to public officers and employees cannot be done through a writ of execution. Under Section 26 of the Government Auditing Code of the Philippines,[205] only the Commission on Audit has the jurisdiction to settle claims "of any sort" against the government:

> SECTION 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

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[204] *Rollo* (G.R. No. 187257), p. 1524, Regional Trial Court Joint Order in Civil Case No. Q-07-61728.

[205] Pres. Decree No. 1445 (1978).

> 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 [sic] 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. (Emphasis supplied)

Money claims and judgments against the government must first be filed with the Commission on Audit. Trial courts have already been strongly cautioned against the issuance of writs of execution in cases involving the disbursement of public funds in Supreme Court Administrative Circular No. 10-2000:[206]

> [SUPREME COURT] ADMINISTRATIVE CIRCULAR NO. 10-2000
>
> TO : All Judges of Lower Courts
>
> SUBJECT : Exercise of Utmost Caution, Prudence and Judiciousness in the Issuance of Writs of Execution to Satisfy Money Judgments Against Government Agencies and Local Government Units
>
> In order to prevent possible circumvention of the rules and procedures of the Commission on Audit, judges are hereby enjoined to observe utmost caution, prudence and judiciousness in the issuance of writs of execution to satisfy money judgments against government agencies and local government units.
>
> Judges should bear in mind that in *Commissioner of Public Highways v. San Diego* (31 SCRA 617, 625 [1970]), this Court explicitly stated:
>
> > The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimant's action 'only up to the completion of proceedings anterior to the stage of execution' and that the power of the Court ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy. Disbursements of public funds must be covered by the corresponding appropriation as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law.

[206] The Administrative Circular was dated October 25, 2000.

> Moreover, it is settled jurisprudence that upon determination of State liability, the prosecution, enforcement or satisfaction thereof must still be pursued in accordance with the rules and procedures laid down in P.D. No. 1445[,] otherwise known as the Government Auditing Code of the Philippines (*Department of Agriculture [vs.] NLRC*, 227 SCRA 693, 701-02 [1993] citing *Republic vs. Villasor*, 54 SCRA 84 [1973]). All money claims against the Government must first be filed with the Commission on Audit which must act upon it within sixty days. Rejection of the claim will authorize the claimant to elevate the matter to the Supreme Court on certiorari and in effect sue the State thereby (P.D. 1445, Sections 49-50)[.]

Thus, in *National Electrification Administration v. Morales*,[207] this Court held that while any entitlement to the back payment of allowances under Republic Act No. 6758 may be adjudicated before the trial court, the parties must file a separate action before the Commission on Audit for the satisfaction of any judgment award.[208]

The Regional Trial Court should have been more prudent in granting the immediate execution, considering that the execution of the judgment award involves the payment of almost ₱8.5 billion in public funds. As previously discussed, there was no legal basis to grant the back payment of additional COLA and AA to NAPOCOR personnel from July 1, 1989 to March 16, 1999.

WHEREFORE, the Petitions for Certiorari and Prohibition in **G.R. Nos. 187257** and **187776** are **GRANTED**. The Decision dated November 28, 2008, Joint Order dated March 20, 2009, and Writ of Execution dated March 23, 2009 of the Regional Trial Court of Quezon City, Branch 84 in Civil Case No. Q-07-61728 are **VACATED** and **SET ASIDE**. The Temporary Restraining Order dated April 15, 2009 is made **PERMANENT**.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

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[207] 555 Phil. 74 (2007) [Per J. Austria-Martinez, Third Division].
[208] Id. at 83–86.

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

No part
DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

No part
JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

No part
FRANCIS H. JARDELEZA
Associate Justice

On leave
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

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.

MARIA LOURDES P. A. SERENO
Chief Justice

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