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G.R. No. 200418 – CONFEDERATION FOR UNITY, RECOGNITION AND ADVANCEMENT OF GOVERNMENT EMPLOYEES (COURAGE), Represented by its National President, Ferdinand Gaité, SOCIAL WELFARE EMPLOYEES ASSOCIATION OF THE PHILIPPINES (SWEAP-DSWD), Represented by its National President, Ramon Felipe E. Loza, NATIONAL FEDERATION OF EMPLOYEES ASSOCIATIONS IN THE DEPARTMENT OF AGRICULTURE (NAFEDA), Represented by its National President, Santiago Y. Dasmariñas, Jr., and DEPARTMENT OF AGRARIAN REFORM EMPLOYEES ASSOCIATION (DAREA), Represented by its National President, Antonia H. Pascual, *Petitioners* v. FLORENCIO B. ABAD, in his capacity as the Secretary of the Department of Budget and Management and CORAZON J. SOLIMAN, in her capacity as Secretary of the Department of Social Welfare and Development, *Respondents*.

Promulgated:

November 10, 2020

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SEPARATE CONCURRING OPINION

PERLAS-BERNABE, J.,

I concur. The ₱25,000.00 ceiling under paragraph 3.5 of Department of Budget and Management (DBM) Budget Circular No. 2011-5¹ on collective negotiation agreement (CNA) incentives for the year 2011 is valid as the same was imposed by the DBM in accordance with its rule-making authority pursuant to existing laws. For reference, the assailed budgetary provision reads:

3.5 The CNA Incentive for FY 2011 shall be determined based on the amount of savings generated by an agency following the guidelines herein, but not to exceed [₱25,000.00] per qualified employee.

Irrefragably, Congress has, by law,² conferred to the DBM “**the sole power and discretion to administer the compensation and position**”

¹ Subject: Supplemental Guidelines on the Grant of Collective Negotiation Agreement (CNA) Incentive for Fiscal Year (FY) 201, issued on December 26, 2011.

² See Section 17 (a) of Presidential Decree No. (PD) 985, entitled “A DECREE REVISING THE POSITION CLASSIFICATION AND COMPENSATION SYSTEMS IN THE NATIONAL GOVERNMENT, AND INTEGRATING THE SAME” (August 22, 1976), as amended by Section 14 of Republic Act No. (RA) 6758, entitled “AN ACT PRESCRIBING A REVISED COMPENSATION AND POSITION CLASSIFICATION SYSTEM IN THE GOVERNMENT AND FOR OTHER PURPOSES,” otherwise known as the “COMPENSATION AND POSITION CLASSIFICATION ACT OF 1989” (July 1, 1989), which now reads:

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classification system [(CPCS)] of the national government”³ and “revise it as necessary.”⁴ Pursuant to Presidential Decree Nos. 985⁵ and 1597,⁶ and more recently, Republic Act No. 6758,⁷ the CPCS covers the payment of **compensation⁸ to “all positions, appointive or elective x x x in the government, including government-owned or controlled corporations and government financial institutions.”⁹**

According to jurisprudence, the DBM’s power to “administer” the CPCS is not to be regarded as “purely ministerial in character”; rather, “it means to *control or regulate* x x x; to *direct or superintend the execution, application or conduct of*; x x x to *manage or conduct* x x x.”¹⁰ Equally, its rule-making authority anent the CPCS is clearly expressed in statute.¹¹ Cogent

Section 17. *Powers and Functions.* – The Budget Commission, principally through the OCPC shall, in addition to those provided under other Sections of this Decree, have the following powers and functions:

- a. **Administer the compensation and position classification system** established herein and **revise it as necessary.** (Emphasis supplied)

Notably, the term “Budget Commission” in the foregoing provision now refers to the Department of Budget and Management (DBM), as per Section 15 of RA 6758.

³ *Cruz v. Court of Appeals*, 322 Phil. 649, 659-660 (1996); emphasis supplied.

⁴ PD 985, Section 17 (a), as amended by RA 6758, Section 14 (a); emphasis supplied.

⁵ See note 2.

⁶ Entitled “FURTHER RATIONALIZING THE SYSTEM OF COMPENSATION AND POSITION CLASSIFICATION IN THE NATIONAL GOVERNMENT” (June 11, 1978).

⁷ See note 2.

⁸ *Intia, Jr. v. Commission on Audit*, 366 Phil. 273, 288 (1999), where the Court observed that, under PD 985, the term “**compensation**” **includes salaries, wages, allowances, and other benefits accruing to government employees.**

⁹ RA 6758, Section 4.

¹⁰ *Commission on Human Rights Employees’ Association v. Commission on Human Rights*, 486 Phil. 509, 527 (2004).

¹¹ Paragraphs (g) and (i), Section 17 of PD 985 read:

Section 17. *Powers and Functions.* — **The Budget Commission**, principally through the OCPC shall, in addition to those provided under other Sections of this Decree, **have the following powers and functions:**

x x x x

- g. **Provide the required criteria and guidelines**, in consultation with agency heads as may be deemed necessary and subject to the approval of the Commissioner of the Budget, for the **grant of all types of allowances and additional forms of compensation** to employees in all agencies of the government;

x x x x

- i. **Promulgate rules and regulations for the implementation of the provisions of this Decree** which, upon approval by the Commissioner of the Budget shall be known as Budget Commission Rules and Regulations on Compensation and Position Classification. (Emphases and underscoring supplied)

Notably, the foregoing provisions remain effective pursuant to Section 21 of RA 6758, which states: “[a]ll provisions of Presidential Decree No. 985, as amended by Presidential Decree No. 1597, which are not inconsistent with this Act and are not expressly modified, revoked or repealed in this Act **shall continue to be in full force and effect**” (emphases and underscoring supplied). It should also be observed that paragraphs (g) and (i), Section 17 of PD 985 were reiterated, *in essence*, by Congressional Joint Resolution No. 4, entitled “JOINT RESOLUTION AUTHORIZING THE PRESIDENT OF THE PHILIPPINES TO MODIFY THE COMPENSATION AND POSITION CLASSIFICATION SYSTEM OF CIVILIAN PERSONNEL AND THE BASE PAY SCHEDULE OF MILITARY AND UNIFORMED PERSONNEL IN THE GOVERNMENT, AND FOR OTHER PURPOSES,” approved on June 17, 2009, which provides:

(17) Functional Responsibilities — (a) In addition to the powers and functions provided in the pertinent items of this Joint Resolution and Presidential Decree No. 985, as amended by

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therewith, the DBM is authorized to determine **any additional compensation which may be received by the government employees apart from their standardized salaries.**¹²

At its core, CNA incentives are a form of **additional compensation**¹³ paid to government employees *“in recognition of their efforts in accomplishing performance targets at lesser cost [and] in attaining more efficient and viable operations through cost-cutting measures and systems improvement.”*¹⁴ For clarity, the term “compensation” is broadly construed to include “all financial and non-financial rewards and entitlements **arising from [an] employment relationship.**”¹⁵ This term therefore includes CNA incentives which are considered as cash compensation items granted to employees. More particularly, CNA incentives fall within the same class as productivity incentives,¹⁶ since both are rewards for exceeding an agency’s financial and operational performance targets, and intended to motivate employee efforts toward higher productivity.

While CNA incentives are an offshoot of collective negotiations pursuant to the limited right of government employees to self-organization, which, in turn, fall within the purview of the Public Sector Labor Management Council (PSLMC), still, because of their nature as compensation, they are not removed from the DBM’s authority to administer. After all, the CNA incentives constitute the payment of public funds to public employees which are to be sourced from the government’s own coffers. In fact, this is the reason why despite the general confirmation of the grant of CNA incentives pursuant to CNAs entered into on or before the effectivity of PSLMC Resolution No.

Presidential Decree No. 1597, Republic Act No. 6758, and Senate and House of Representatives Joint Resolution No. 01, s. 1994, **the DBM shall:**

(i) Prepare and issue the guidelines, rules and regulations necessary to implement the modified Compensation and Position Classification System for all government personnel herein established consistent with the executive orders to be issued by the President[.] (Emphasis and underscoring supplied)

¹² See RA 6758, Section 12.

¹³ As defined, the term “compensation” is broadly construed to include “all financial and non-financial rewards and entitlements arising from [an] employment relationship (Paragraph 3.2.1, DBM Manual on Position Classification and Compensation, published on February 2007 and disseminated by Circular Letter No. 2007-6 dated February 19, 2007). This includes CNA incentives as cash compensation items which are granted to employees based on certain qualifications or rendition of special services. Particularly, CNA incentives are treated in the same class as productivity incentives, as both are rewards for exceeding agency financial and operational performance targets, and to motivate employee efforts toward higher productivity. See Paragraph 4 (h) (ii) of Congressional Joint Resolution No. 4; Section 3 of Administrative Order No. 103, entitled “DIRECTING THE CONTINUED ADOPTION OF AUSTERITY MEASURES IN THE GOVERNMENT,” approved on August 31, 2004; Administrative Order No. 135, entitled “AUTHORIZING THE GRANT OF COLLECTIVE NEGOTIATION AGREEMENT (CNA) INCENTIVE TO EMPLOYEES IN GOVERNMENT AGENCIES” (December 27, 2005); and Chapter 3 of the DBM Manual on Position Classification and Compensation.

¹⁴ Congressional Joint Resolution No. 4, Paragraph 4 (h) (ii) (aa); emphasis supplied. See also Section 1 of Public Sector Labor-Management Council (PSLMC) Resolution No. 4, series of 2002, entitled “GRANT OF COLLECTIVE NEGOTIATION AGREEMENT (CNA) INCENTIVE FOR NATIONAL GOVERNMENT AGENCIES, STATE UNIVERSITIES AND COLLEGES AND LOCAL GOVERNMENT UNITS,” approved on November 14, 2002, which states that these amounts are given “[i]n recognition of the joint efforts of labor and management to achieve all planned targets, programs and services approved in the budget of the agency at a lesser cost x x x.”

¹⁵ DBM Manual on Position Classification and Compensation, Paragraph 3.2.1; emphasis supplied.

¹⁶ See note 13.

4, series of 2002 and PSLMC Resolution No. 2, series of 2003,¹⁷ **Administrative Order No. 135, series of 2005¹⁸ (AO 135), specifically states that “[t]he [DBM] shall issue the policy and procedural guidelines to implement this Administrative Order.”¹⁹** AO 135 notably provides for, among others, the parameters to rationalize CNA incentives so as to avoid duplication with PRAISE²⁰ incentives, as well as considerations for cost-cutting measures and systems improvement, and release.²¹ Hence, pursuant to AO 135, the imposition of CNA incentive rates is well within the DBM’s rule-making power.

In any event, Congress itself has confirmed the DBM’s power to set ceilings on CNA incentives by specifically providing for the same in each of the annual general appropriations laws from the year 2012 to the present. In particular, the provisions of the General Appropriations Act (GAA) throughout the years consistently state that **the approved CNA incentives shall be limited to such reasonable rates as may be determined by the DBM:**

Section 56. *Rules in the Realignment of Funds.* x x x.

x x x x

x x x Moreover, the use of savings for the payment of Collective Negotiation Agreement (CNA) incentives by agencies with approved and successfully implemented CNAs pursuant to DBM Budget Circular No. 2006-1 dated February 1, 2006 **shall be limited to such reasonable rates as may be determined by the DBM.**²² (Emphasis supplied)

Section 55. *Rules in the Realignment of Savings for the Payment of Collective Negotiation Agreement Incentives.* — x x x **amount of CNA incentives shall, in all cases, be limited to** the allowable MOOE allotments and **rates determined by the DBM,** respectively.

Implementation of this provision shall be governed by DBM Budget Circular Nos. 2006-1 and 2011-5 and such other issuances that may be issued by the DBM for the purpose.²³ (Emphases and underscoring supplied)

¹⁷ Entitled “GRANT OF COLLECTIVE NEGOTIATION AGREEMENT (CNA) INCENTIVE FOR GOVERNMENT OWNED OR CONTROLLED CORPORATIONS (GOCCS) AND GOVERNMENT FINANCIAL INSTITUTIONS (GFIS),” approved on May 19, 2003.

¹⁸ See note 13.

¹⁹ AO 135, Section 6; emphasis supplied.

²⁰ “PRAISE” stands for “Program on Awards and Incentives for Service Excellence.”

²¹ AO 135, Sections 2, 3, and 5.

²² RA 10155, or the “GENERAL APPROPRIATIONS ACT OF 2012,” approved December 15, 2011.

²³ RA 10352, or the “GENERAL APPROPRIATIONS ACT OF 2013,” approved December 19, 2012.

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Section 71. *Rules in the Realignment of Savings for the Payment of Collective Negotiation Agreement Incentives.* — x x x That the funding sources and **amount of CNA Incentive shall in all cases be limited** to the allowable MOOE allotments and **rates determined by the DBM**, respectively: PROVIDED, FINALLY, That the realignment of savings from the allowable MOOE allotments shall be subject to approval by the DBM.

Implementation of this provision shall be subject to guidelines issued by the DBM.²⁴ (Emphases supplied)

Section 74. *Rules in the Payment of Collective Negotiation Agreement Incentives.* — x x x That the funding sources and **amount of CNA Incentive shall in all cases be limited to the** allowable MOOE allotments and **rates determined by the DBM**, respectively x x x.

Implementation of this provision shall be subject to guidelines issued by the DBM.²⁵ (Emphases supplied)

Section 77. *Rules in the Grant of Collective Negotiation Agreement Incentive.* — Departments, bureaus, and offices of the National Government, including Constitutional Offices enjoying fiscal autonomy and SUCS may grant collective negotiation agreement (CNA) Incentive sourced from the allowable MOOE allotments identified by the DBM, subject to the following:

x x x x

(c) The **CNA Incentive that may be granted shall be limited to the amount determined by the DBM[.]**²⁶ (Emphasis supplied)

Section 71. *Rules in the Grant of Collective Negotiation Agreement Incentive.* — Departments, bureaus, and offices of the National Government, including Constitutional Offices enjoying fiscal autonomy and SUCs may grant collective negotiation agreement (CNA) Incentive sourced from the allowable MOOE allotments identified by the DBM, subject to the following:

x x x x

(c) The **CNA Incentive that may be granted shall be limited to the amount determined by the DBM[.]**²⁷ (Emphasis supplied)

Section 73. *Rules in the Grant of Collective Negotiation Agreement Incentive.* — Departments, bureaus, and offices of the National Government, including Constitutional Offices enjoying fiscal autonomy and SUCs may grant collective negotiation agreement (CNA) Incentive

²⁴ RA 10633, or the "GENERAL APPROPRIATIONS ACT OF 2014," approved December 20, 2013.

²⁵ RA 10651, or the "GENERAL APPROPRIATIONS ACT OF 2015," approved December 15, 2014.

²⁶ RA 10717, or the "GENERAL APPROPRIATIONS ACT OF 2016," approved December 21, 2015.

²⁷ RA 10924, or the "GENERAL APPROPRIATIONS ACT OF 2017," approved December 22, 2016.

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sourced from the allowable MOOE allotments identified by the DBM, subject to the following:

X X X X

(c) The CNA Incentive that may be granted shall be limited to the amount determined by the DBM[.]²⁸ (Emphasis supplied)

Section 77. *Rules in the Grant of Collective Negotiation Agreement Incentive.* — Departments, bureaus, and offices of the National Government, including Constitutional Offices enjoying fiscal autonomy and SUCs may grant collective negotiation agreement (CNA) Incentive sourced from the allowable MOOE allotments identified by the DBM, subject to the following:

X X X X

(c) The CNA Incentive that may be granted shall be limited to the amount determined by the DBM[.]²⁹ (Emphasis supplied)

Notably, the present case must be contrasted with *Dadole v. Commission on Audit (Dadole)*,³⁰ where the Court struck down the DBM's ceiling on allowances granted to judges by the City of Mandaue since it directly contravened Section 458, paragraph (a) (1) [xi], of the Local Government Code which authorized the grant of additional allowances "when the finances of the city government allow."³¹ As opposed to *Dadole*, the ₱25,000.00-ceiling on CNA incentives in DBM Budget Circular No. 2011-5 is premised on existing laws conferring the DBM with rule-making authority and in addition, also fosters a fiscal policy that is reasonable. As the DBM pointed out in this case, the ₱25,000.00-ceiling was meant to address the "perverse tendency of agencies of scrimping on vital expenditures or bloating their budgets just so as to accumulate savings."³² Thus, there being no cogent justification to strike down paragraph 3.5 of DBM Budget Circular No. 2011-5, the same must be upheld by the Court.

At this juncture, it is, however, important to highlight that DBM Budget Circular No. 2011-5 is a regulation that applies to CNA incentives in general. *It is different from the January 20, 2012 Department of Social Welfare and Development (DSWD) Memorandum which is a specific implementation of the said department pertaining to the CNA incentives already released to its*

²⁸ RA 10964, or the "GENERAL APPROPRIATIONS ACT OF 2018," approved December 19, 2017.

²⁹ RA 11260, or the "APPROPRIATING FUNDS FOR THE OPERATION OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FROM JANUARY ONE TO DECEMBER THIRTY-ONE, TWO THOUSAND AND NINETEEN AND FOR OTHER PURPOSES," approved on April 15, 2019, which was extended to the year 2020 by virtue of RA 11464, otherwise known as "AN ACT EXTENDING THE AVAILABILITY OF THE 2019 APPROPRIATIONS TO DECEMBER 31, 2020, AMENDING FOR THE PURPOSE SECTION 65 OF THE GENERAL PROVISIONS OF REPUBLIC ACT NO. 11260 THE GENERAL APPROPRIATIONS ACT OF FISCAL YEAR 2019," approved December 20, 2019.

³⁰ 441 Phil. 532 (2002).

³¹ *Id.* at 545.

³² See DBM Memorandum dated July 29, 2013; *rollo*, p. 293.

employees. For its part, said Memorandum essentially orders the DSWD employees who had received CNA incentives in the amount of ₱30,000.00 to each return the excess ₱5,000.00 they received, which is the surplus amount released beyond DBM Budget Circular No. 2011-5's ₱25,000.00-cap, *viz.*:

SUBJECT Refund of FY 2011 CNA Incentive

Please be informed that pursuant to DBM Budget Circular No. 2011-5 entitled Supplemental Guidelines on the Grant of Collective Negotiation Agreement (CNA) Incentive for Fiscal Year (FY) 2011, each qualified employee shall be entitled to CNA Incentive but not to exceed ₱25,000.00.

In compliance with the above-mentioned DBM Circular, you are hereby directed to refund the amount of ₱5,000.00 through a fixed monthly deduction from your salary in the amount of ₱500.00 each month effective February 2012 to November 2012 or equivalent to ten (10) months payment.³³

In my view, while government employees have no vested rights to CNA incentives *per se* since their grant is conditioned upon numerous legal requirements (*e.g.*, existence of savings), **when they, however, had already been released and that their release did not contravene any law, rule or budget regulation at that time, then it would be clearly unfair and unjust to mandate their return, as what the DSWD's January 20, 2012 Memorandum does.**

To recall, the DSWD authorized the payment of the subject CNA incentives on October 26, 2011³⁴ and December 3, 2011,³⁵ and were disbursed accordingly. On the other hand, DBM Budget Circular No. 2011-5 was issued only on December 26, 2011³⁶ and took effect much later, when it was published in a newspaper of general circulation on February 25, 2012.³⁷ As earlier discussed, *since the subject amounts had already been given to the employees without any qualification, and much more, were released to them at the time when the CNA incentives had no cap*, their return on the basis of the subsequent issuance of DBM Budget Circular No. 2011-5 amounts to a retroactive application of an administrative regulation³⁸ which is simply unfair and unjust.

³³ Id. at 63.

³⁴ See DSWD Memorandum dated October 26, 2011; *id.* at 57.

³⁵ See DSWD Memorandum dated December 3, 2011; *id.* at 58.

³⁶ See *id.* at 305.

³⁷ See Certificate of Publication issued by the Philippine Star dated July 23, 2013; *id.* at 306. See also: *De Jesus v. Commission on Audit*, 355 Phil. 584 (1998), citing *Tañada v. Tuvera*, 230 Phil. 528 (1986), where the Court ruled that a DBM circular which enforces or implements an existing law should be published for it to take effect.

³⁸ See *Al-Amanah Islamic Investment Bank of the Phils. v. Civil Service Commission*, 284 Phil. 92 (1992); *Co v. Court of Appeals*, 298 Phil. 221 (1993); *Spouses Arrastia v. National Power Corp.*, 555 Phil. 263 (2007).

Accordingly, I vote to **PARTIALLY GRANT** the petition. Paragraph 3.5 of DBM Budget Circular No. 2011-5 is **UPHELD**, while the January 20, 2012 DSWD Memorandum is declared **VOID**.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice