



SUPREME COURT OF THE PHILIPPINES  
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Republic of the Philippines  
Supreme Court  
Manila

*EN BANC*

**DEVELOPMENT BANK OF THE PHILIPPINES, G.R. Nos. 210965 & 217623  
PHILIPPINES,**

Petitioner, Present:

- versus -

**COMMISSION ON AUDIT,**

Respondent.

GESMUNDO, *CJ.*,  
PERLAS-BERNABE,\*  
LEONEN,  
CAGUIOA,  
HERNANDO,  
LAZARO-JAVIER,  
INTING,  
ZALAMEDA,  
LOPEZ, M.,  
GAERLAN,  
ROSARIO,  
LOPEZ, J.,  
DIMAAMPAO,\*\*  
MARQUEZ, and  
KHO, JR., *JJ.*

Promulgated:

March 22, 2022

X

**DECISION**

**ZALAMEDA, J.:**

Before this Court are the consolidated cases<sup>1</sup> filed by petitioner Development Bank of the Philippines (DBP) against respondent Commission on Audit (COA) regarding the Notices of Disallowance (NDs)

\* On official leave.

\*\* On official business.

<sup>1</sup> In a Resolution dated 08 January 2019, the Court consolidated G.R. No. 210965 (*Development Bank of the Philippines v. Commission on Audit*) with G.R. No. 217623 (*Development Bank of the Philippines v. Commission on Audit*).

issued by COA. **G.R. No. 210965** is a Petition for *Certiorari*<sup>2</sup> seeking to annul COA Decision No. 2012-030<sup>3</sup> dated 13 March 2012 and COA Resolution<sup>4</sup> dated 06 December 2013, while in **G.R. No. 217623**,<sup>5</sup> petitioner seeks to set aside COA Decision No. 2013-216 dated 03 December 2013,<sup>6</sup> and COA Resolution dated 17 March 2015.<sup>7</sup> These cases were consolidated, since they pertain to COA's issuance of NDs regarding the allowances and benefits received by DBP's officers and employees.

### Antecedents

#### *G.R. No. 210965*

On 23 April 2007, DBP received from COA, through its Supervising Auditor, Hilconeda P. Abril (Auditor Abril), four Audit Observation Memoranda (AOM)<sup>8</sup> relative to the grant of additional allowances and fringe benefits to DBP officers acting as officers of DBP Subsidiaries in 2006. The AOM stated that the allowances and benefits constitute double compensation to DBP officers, since they receive the same type of benefits from DBP where they hold permanent plantilla positions. Auditor Abril directed DBP to cause the immediate refund of all additional allowances granted to the officers in compliance with laws on double compensation.<sup>9</sup>

To support its position, Auditor Abril quoted DBM Circular Letter No. 2003-10 dated 10 October 2003 on the grant of additional bonuses in any form, which provides:

2.1 Unless authorized by Law or the President, the grant of additional bonuses in the form of cash groceries, gift certificates and other goods to officials and employees is strictly prohibited.

2.3 Any grant of the above-mentioned bonuses without the approval of the President shall be illegal disbursement of public funds. Anyone found violating this directive shall be dealt with in accordance with the applicable provisions of existing administrative and penal laws.

<sup>2</sup> RULES OF CIVIL PROCEDURE, Rule 65; in relation to Rule 64; *rollo* (G.R. No. 210965), pp. 3-34.

<sup>3</sup> *Id.* at 35-43.

<sup>4</sup> *Id.* at 44-45.

<sup>5</sup> Petition for *Certiorari* under the RULES OF CIVIL PROCEDURE, Rule 65, in relation to Rule 64; *rollo* (G.R. No. 217623), pp. 3-76.

<sup>6</sup> *Id.* at 77-87.

<sup>7</sup> *Id.* at 91-94.

<sup>8</sup> One of which is AOM dated 18 April 2007; *rollo* (G.R. No. 210965), pp. 60-62.

<sup>9</sup> *Rollo* (G.R. No. 210965), p. 70.

The AOM also cited Section 5 of Presidential Decree No. (PD) 1597,<sup>10</sup> which states that “[a]llowances, honoraria[,] and other fringe benefits which may be granted to government employees, whether payable by their respective offices or by other agencies of government, shall be subject to the approval of the President upon recommendation of the Commissioner of the Budget.”

In reply<sup>11</sup> to the AOM, DBP requested for the reversal of the AOM recommendations, arguing that DBM Circular Letter No. 2003-10 and PD 1597 do not apply to DBP, since under its Charter, it is exempt from existing laws, rules, and regulations on compensation, position, and qualification standards. DBP insists that the amounts received as allowances, per diems, and/or honoraria by DBP officers from its subsidiaries where they perform services connected with or directly related to their functions as officers/employees of DBP should not be considered as double compensation.

Subsequently, Auditor Abril issued ND No. SUB-2006-11 (06)<sup>12</sup> dated 29 May 2007, informing DBP that the payment of additional allowances/fringe benefits to DBP officers acting as officers of DBP subsidiaries (namely, DBP Management Corporation [DBPMC], DBP Data Center, Inc. [DBPDCI], and Industrial Guarantee Loan Fund [IGLF]) had been disallowed in audit, and directing the persons named therein to settle immediately the aforesaid disallowance. ND No. SUB-2006-11 (06) disallowed the total amount of ₱1,629,303.34, broken down as follows:<sup>13</sup>

<b>DBPDCI</b>	Director’s Allowance	₱ 349,375.00
	Representation Allowance	95,000.00
	Transportation Allowance	6,000.00
	<b>Sub Total</b>	<b>₱ 450,375.00<sup>14</sup></b>
<b>DBPMC</b>	Reimbursable Promotional Allowance	₱ 360,000.00
	<b>Sub Total</b>	<b>₱ 360,000.00<sup>15</sup></b>
<b>IGLF</b>	Honoraria	₱ 398,928.34
	Gift Certificate	420,000.00
	<b>Sub Total</b>	<b>₱ 818,928.34<sup>16</sup></b>
	<b>Grand Total</b>	<b>₱ 1,629,303.34<sup>17</sup></b>

<sup>10</sup> Further Rationalizing the System of Compensation and Position Classification in the National Government, which took effect on 11 June 1978.

<sup>11</sup> *Rollo* (G.R. No. 210965), pp. 63-70.

<sup>12</sup> *Id.* at 71-88.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 73.

<sup>15</sup> *Id.* at 74

<sup>16</sup> *Id.* at 74

<sup>17</sup> *Id.* at 88.

DBP filed a Notice of Appeal<sup>18</sup> dated 05 October 2007, which was denied for lack of merit by COA's Legal Services Sector (LSS) in LSS Decision No. 2009-141<sup>19</sup> dated 18 March 2009, which affirmed ND No. SUB-2006-11 (06). On 24 August 2009, DBP filed a Memorandum of Appeal<sup>20</sup>. Subsequently, DBP filed a Manifestation and Motion<sup>21</sup> dated 08 July 2010, stating that then President Gloria Macapagal-Arroyo (President Arroyo) has confirmed the power and authority of the DBP Board of Directors (BOD), independently of Memorandum Order (MO) No. 20, s. 2001,<sup>22</sup> to approve and allow the implementation and subsequent refinements of DBP's Compensation Plan, including the grant of allowances and other benefits from DBP subsidiaries to DBP officers serving in such subsidiaries. Thus, DBP claimed that the approval of the Office of the President made the subject disallowance moot and academic.<sup>23</sup>

On 13 March 2012, COA rendered a Decision<sup>24</sup>, denying DBP's appeal for lack of merit. COA affirmed LSS Decision No. 2009-141, sustaining ND No. SUB-2006-11 (6), disallowing the amount of ₱1,629,303.34. DBP moved for reconsideration, which COA denied in its Resolution<sup>25</sup> dated 06 December 2013.

*G.R. No. 217623*

On 25 May 1999, the DBP BOD approved Board Resolution No. 0254, putting in place a system of rewards for its officers and employees.<sup>26</sup>

For the years 2005 and 2006, DBP granted its officers and employees an additional bonus of ₱1,200.00 per month to help employees cope with the economic difficulties brought about by the sharp increase in the price of oil and other petroleum-based products. In 2006, DBP also gave its officers and employees ₱4,000.00 (net of tax) economic assistance to enable them to cope with the increasing cost of prime commodities.<sup>27</sup>

On 07 September 2005, the DBP BOD issued Executive Committee Resolution No. 0097,<sup>28</sup> approving the integration of the officers' allowance

<sup>18</sup> Id. at 89.

<sup>19</sup> Id. at 92-99.

<sup>20</sup> Id. at 106-128.

<sup>21</sup> Id. at 136-141.

<sup>22</sup> Directing Heads of Government-Owned-and-Controlled Corporations (GOCCs), Government Financial Institutions (GFIs) and Subsidiaries Exempted From or Not Following the Salary Standardization Law (SSL) to Implement Pay Rationalization in All Senior Officer Positions, which took effect on 25 June 2001.

<sup>23</sup> *Rollo* (G.R. No. 210965), pp. 170-171.

<sup>24</sup> Id. at 185-193.

<sup>25</sup> Id. at 44-45.

<sup>26</sup> *Rollo* (G.R. No. 217623), p. 78.

<sup>27</sup> Id.

<sup>28</sup> Id. at 183-184.

to the basic pay to rationalize the compensation structure and make it consistent with the total compensation concept adopted in DBP's compensation strategy. In addition, for the calendar year 2006, the DBP BOD granted a 5.85% average merit increase to its officers and employees under Board Resolution No. 0114.<sup>29</sup>

Consequently, in 2007, Auditor Abril issued two AOMs requiring the refund of the Economic Assistance given in 2005 and 2006.<sup>30</sup> In another AOM dated 19 February 2007, Auditor Abril recommended discontinuing the implementation of the integration of the officers' allowance to basic pay and for management to obtain approval from the Office of the President.<sup>31</sup> Subsequently, on 30 March 2007, Auditor Abril issued another AOM, recommending the following to DBP Management: (1) request for the approval from the Office of the President for the increase of salaries granted to DBP officials and employees effective March 2006; (2) stop the grant of the step increment; and (3) require the immediate refund of the released benefit from concerned DBP officials and employees.<sup>32</sup>

The AOMs were issued in line with MO No. 20, Administrative Order (AO) No. 103, s. 2003,<sup>33</sup> PD 1597, and other related issuances that require, among others, the approval of the President of the Philippines before any increase in salaries, allowances, and other benefit may be granted by government entities including government-owned and controlled corporations (GOCCs).

DBP submitted its comments on the AOMs. Not satisfied with DBP's justifications, Auditor Abril issued the following NDs:

Date	ND No.	Particulars	Amount
17 May 2007	OA-2006-006 (06)	Officers' Allowance (OA)	₱ 38,260,000.00
17 May 2007	EA-2006-005 (05 and 06)	Economic Assistance (EA)	₱ 54,154,230.00
21 May 2007	Merit-2006-008 (06)	Merit Increase	₱ 14,185,486.93
<b>Total</b>			<b>₱ 106,599,716.93<sup>34</sup></b>

On 08 October 2007, DBP appealed the NDs to COA Cluster Director, Cluster A, Corporate Government Sector (CGS-A)<sup>35</sup>. On 09 July 2010, while

<sup>29</sup> Id. at 95.

<sup>30</sup> Id. at 247-253.

<sup>31</sup> Id. at 185-189.

<sup>32</sup> Id. at 96-99.

<sup>33</sup> Directing the Continued Adoption of Austerity Measures in the Government which took effect on 31 August 2004.

<sup>34</sup> *Rollo* (G.R. No. 217623), p. 77.

<sup>35</sup> Id. at 79.

the appeal was pending, DBP submitted a Manifestation and Motion informing the cluster director that it was able to procure approval from President Arroyo on the merit increases and other benefits it granted to its officers and employees. Hence, the principal issue of its failure to procure such approval was already cured.

Notwithstanding the manifestation and motion, the cluster director of CGS-A denied the appeal, prompting DBP to file before COA a Petition for Review dated 16 February 2011. DBP prayed for the reversal of CGS-A Decision No. 2010-004 dated 28 December 2010, which affirmed the NDs on merit increase, economic assistance, and integration of officers' allowance.

Subsequently, COA rendered Decision No. 2013-216,<sup>36</sup> denying DBP's petition for review for lack of merit. COA affirmed ND Nos. OA-2006-006 (06), EA-2006-005 (05 and 06) and Merit-2006-008 (06), disallowing the total amount of ₱106,599,716.93.

### **Ruling of the COA**

#### *G.R. No. 210965*

COA affirmed LSS Decision No. 2009-141, sustaining ND No. SUB-2006-11 (6) and disallowing the amount of ₱1,629,303.34.<sup>37</sup> It ruled that the DBP officers are covered by the constitutional prohibition provided under Section 8, Article IX (B), which prohibits appointive public officers or employee from receiving additional, double, or indirect compensation unless authorized by law. The authorization by the respective boards of DBPDCI and DBPMC granting additional compensation to DBP officers who were designated as members of the Board is not a law. Likewise, DBP officers who are members of the Review Committee and Technical Advisory Group of IGLF in *ex-officio* capacity are also prohibited from receiving any extra compensation.<sup>38</sup>

Further, COA found unacceptable DBP's claim that the amounts disallowed were not in the concept of a fixed salary but were in the form of reimbursement of expenses for attendance of meetings and performance of duties. DBP's claim lacked documentary support and its claims are bare allegations without any probative value.<sup>39</sup>

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<sup>36</sup> Id. at 77-87.

<sup>37</sup> *Rollo* (G.R. No. 210965), p. 42.

<sup>38</sup> Id. at 40-42.

<sup>39</sup> Id. at 41-42.

*G.R. No. 217623*

COA affirmed ND Nos. OA-2006-006 (06), EA-2006-005 (05 and 06) and Merit-2006-008 (06), disallowing the total amount of ₱106,599,716.93. It cited Section 16 of the General Appropriations Act (GAA) of 2005, which prohibits expenditures for allowances and other forms of compensation not specifically authorized by law. COA held that the grant of additional compensation to DBP officers and employees lacked legal basis, since these were granted merely through the resolutions of DBP BOD, and not specifically authorized by existing laws. Although the DBP BOD is authorized by the Revised DBP Charter to adopt and fix additional compensation, the grant of the disallowed benefits did not have the requisite approval of the President as sanctioned by PD 1597 and MO 20.<sup>40</sup>

As to the subsequent confirmation by the president on the BOD's authority to formulate and adopt a compensation plan, COA countered that what is required under PD 1597 and MO 20 is the approval of the president on the grant of additional compensation or allowance, which DBP seeks to implement and not merely the authority of its BOD to fix the compensation. Besides, COA pointed out that President Arroyo's approval fell within the election period ban since it was made 17 days before the 10 May 2010 elections. Section 261, Article XXII of the Omnibus Election Code prohibits any government official from giving any increase of salary or remuneration to any government official or employee during the period of 45 days before a regular election and 30 days before a special election. COA concluded that President Arroyo's approval of the grant of additional compensation or allowances was illegal and amounts to no approval at all.<sup>41</sup>

**Issue**

For the Court's resolution is whether COA committed grave abuse of discretion in affirming the NDs.

**Ruling of the Court**

The Court partially grants the petitions in G.R. Nos. 210965 and 217623.

In both its petitions, DBP relies heavily on the alleged subsequent approval by President Arroyo of DBP's Compensation Plan for 1999, and insists that said approval has rendered the subject disallowances moot and academic. The Letter<sup>42</sup> dated 22 April 2010 addressed to President Arroyo on

<sup>40</sup> *Rollo* (G.R. No. 217623), p. 85.

<sup>41</sup> *Id.*

<sup>42</sup> *Rollo* (G.R. No. 210965), pp. 142-143; *Rollo* (G.R. No. 217623), pp. 166-167.

the subject of the president's confirmation of DBP BODs authority to approve a compensation plan for DBP personnel states:

FOR : HER EXCELLENCY GLORIA MACAPAGAL ARROYO  
PRESIDENT, REPUBLIC OF THE PHILIPPINES

From : The DBP Chairman  
The DBP President and Chief Executive Officer

Subject : Confirmation by her Excellency of the DBP Board's Authority to  
Approve a Compensation Plan for DBP Personnel

Date : April 22, 2010

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Pursuant to Section 13 of the Revised DBP Charter exempting the Bank from the Salary Standardization Law (SSL), the DBP Board of Directors approved a Compensation Plan for DBP officers and employees comparable with that of the private sector. The Plan, which incorporates performance as a key determinant of compensation and rewards, was made effective starting March 1999. Although the Plan was subjected to subsequent updating and refinements by the Board, no new items were added since then. The Plan consists of 1) a basic salary structure distinct from the SSL structure; 2) mandatory benefits enjoyed by all government employees; and 3) other emoluments, allowances and benefits in addition to SSL benefits (Annex A is DBP's updated basic salary structure and benefits in addition to SSL benefits).

The implementation of the Compensation Plan has driven the Bank's performance. Annual net income grew from less than P2 Billion in 2001 to an all-time high of P6 Billion in 2009. The Bank also paid a total of P18.3 Billion in taxes from 2001 to 2009. For 2009 alone, it has declared and remitted P2.5 B in dividends in favor of the National Government.

In 2007, however, the Commission on Audit (COA), citing memorandum Order (M.O.) No[.] 20 dated June 25, 2001 and DBM Cir. Letter No. 2003-10, s. 2003, disallowed several components of the Plan for lack of prior approval by the Office of the President. DBP has appealed the disallowances, raising the legal issue that M.O. No. 20 does not apply to DBP and that COA's interpretation dilutes the authority of the Board of Directors to formulate and approve DBP's Compensation Plan as provided for in the DBP Charter.

In June 2009, Joint Resolution No. 4 was promulgated requiring SSL-exempt agencies to seek prior approval of the Office of the President before it can implement or grant any increases or new benefits. In the interest of stability, there is a need to finally resolve issues arising from the adoption, implementation, and administration of DBP's Compensation Plan which the Board of Directors had approved, refined[.] and allowed to be implemented prior to Joint Resolution No. 4 and even prior to M.O. No. 20. Further, since Joint Resolution No. 4 has the force of law, DBP shall henceforth comply





with it. Accordingly, in Board Resolution No. 0045 dated February 26, 2010, the Board of Directors resolved as follows:

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

*(1) Basic salary structure as refined and reformulated (Annex A), including integration to basic pay of officers' allowance, meal allowance and longevity pay; provided that in the continuing implementation of the structure, DBP basic salary levels shall at least be equal to the basic salary levels of equivalent positions in SSL-covered agencies as adjusted under Joint Resolution No. 4;*

*(2) Continuing implementation of benefits outside SSL (Annex B), including the Bank's motor vehicle lease-purchase program;*

*(3) Grant of annual merit increases;*

*(4) Implementation of DBP's Early Retirement Incentive Program (ERIP), the adoption and implementation of which has been recognized by the DBM as compliance with the government's rationalization plan as mandated by Executive Order No. 366 and by the Department of Finance as within the DBP Board's authority (pertinent letters of the DBM and of the Secretary of Finance to DBP are Annexes C and D);[and]*

*(5) Authority given to DBP officers serving in DBP's subsidiaries to receive allowances and other benefits from such subsidiaries, provided such officers were properly designated and authorized as such in accordance applicable rules.*

*Passed by the DBP Board of Directors on the 26<sup>th</sup> day of February 2010.*

In view of the foregoing, we respectfully request Her Excellency's confirmation of the implementation of DBP's Compensation Plan from 1999 onward as authorized by the DBP Board of Directors.

(Sgd.)  
REYNALDO G. DAVID  
President and CEO

(Sgd.)  
PATRICIA A. STO. TOMAS  
Chairman

APPROVED / ~~DISAPPROVED~~ [but not to include  
members of the Board.  
Approval is good for the  
period up to June 30, 2010.]<sup>43</sup>

(Sgd.)  
H.E. GLORIA MACAPAGAL ARROYO  
President, Republic of the Philippines<sup>44</sup>

<sup>43</sup> Handwritten marginal note of President Arroyo on the letter.

<sup>44</sup> Rollo (G.R. No. 210965), pp. 142-143; rollo (G.R. No. 217623), pp. 166-167.

*G.R. No. 210965*

DBP stresses that the allowances and benefits paid to DBP officers were disallowed mainly on the ground that the same did not have the approval of the President. The subsequent approval of the President, as reflected in the Letter dated 22 April 2010 cured the defect, making the subject disallowance moot and academic.

We disagree with DBP's contention. As ruled by COA, the additional allowances and benefits received by DBP officers are covered by the constitutional proscription on double compensation. In particular, Section 8, Article IX (B) of the Constitution reads:

**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 compensations.

Thus, unless specifically authorized by law, a public officer or employee is prohibited from receiving additional, double, or indirect compensation. This proscription against additional, double, or indirect compensation is a constitutional curb on the spending power of the government.<sup>45</sup> In *Peralta v. Mathay*,<sup>46</sup> the Court explained the purpose of the prohibition:

This is to manifest a commitment to the fundamental principle that a public office is a public trust. It is expected of a government official or employee that he keeps uppermost in mind the demands of public welfare. He is there to render public service. He is of course entitled to be rewarded for the performance of the functions entrusted to him, but that should not be the overriding consideration. The intrusion of the thought of private gain should be unwelcome. The temptation to further personal ends, public employment as a means for the acquisition of wealth, is to be resisted. That at least is the ideal. There is then to be an awareness on the part of an officer or employee of the government that he is to receive only such compensation as may be fixed by law. With such a realization, he is expected not to avail himself of devious or circuitous means to increase the remuneration attached to his position.<sup>47</sup>

<sup>45</sup> J. Bernas, *The 1987 Constitution of the Philippines: A Commentary* (2009), p. 1067.

<sup>46</sup> 148 Phil. 261 (1971).

<sup>47</sup> *Id.*



In ND No. SUB-2006-11 (6), Auditor Abril explained that the allowances and benefits granted by DBPDCI, DBPMC, and IGLF to some of its officers who are holding a permanent plantilla position at DBP constitute double compensation, since these officers already receive the same type of benefits from DBP. The double compensation was explicitly illustrated by Auditor Abril in ND No. SUB-2006-11 (6):

**DBPMC:**

Names	Per DBPMC Report	
	Reimbursable Promotional Allowance (RPA)	
1. Edgardo F. Garcia	₱	60,000.00
2. Elizabeth P. Ong		30,000.00
3. Rolando S. Geronimo		60,000.00
4. Armando O. Samia		60,000.00
5. Ma. Theresa L. Quirino		50,000.00
6. Alberto B. Reyno		48,000.00
7. Articer O. Quebal		10,000.00
8. Rosalio G. Fetalbo		42,000.00
<b>TOTAL</b>	<b>[₱</b>	<b>360,000.00]</b> <sup>48</sup>

Names	Per DBP Payroll	
	Representation Allowance (RA)	
1. Edgardo F. Garcia	₱	51,000.00
2. Elizabeth P. Ong		25,500.00
3. Rolando S. Geronimo		51,000.00
4. Armando O. Samia		39,900.00
5. Ma. Theresa L. Quirino		43,800.00
6. Alberto B. Reyno		43,800.00
7. Articer O. Quebal		21,900.00
8. Rosalio G. Fetalbo		37,200.00
<b>TOTAL</b>	<b>₱</b>	<b>314,100.00</b> <sup>49</sup>

**IGLF:**

DBP Officers	Honoraria	Gift Certificate	Total
1. Vitaliano N. Nanagas	₱ 15,355.00	₱ 0.00	₱ 15,355.00
2. Edgardo F. Garcia	45,786.67	70,000.00	115,786.67
3. Valentina R. Ricasio	63,600.00	70,000.00	133,600.00
4. Brillo L. Reynes	31,800.00	70,000.00	101,800.00
5. Carolina C. Zapatos	31,800.00	0.00	31,800.00
6. Cecilia M. Dimagiba	15,900.00	0.00	15,900.00
7. Vivian B. Agbada	63,600.00	70,000.00	133,600.00

<sup>48</sup> In ND No. SUB-2006-11 (6), Auditor Abril erroneously stated the total as ₱210,000.00; *rollo* (G.R. No. 210965), p. 222.

<sup>49</sup> *Rollo* (G.R. No. 210965), p. 222.

8. Eufemia C. Mendoza	35,686.67	70,000.00	105,686.67
9. Elizabeth P. Ong	31,800.00	0.00	31,800.00
10. Lutgarda B. Peralta	63,600.00	70,000.00	133,600.00
<b>TOTAL</b>	<b>₱ 398,928.34</b>	<b>₱ 420,000.00</b>	<b>₱ 818,928.34</b>

**DBPDCI:**

<b>Names Per Subsidiary Report:</b>	<b>Director's Allowance</b>	<b>Representation Allowance</b>	<b>Transportation Allowance</b>	<b>Total</b>
1. Clarito L. Magsino	₱ 118,750.00	₱ 95,000.00	₱ 0.00	₱ 213,750.00
2. Armando O. Samia	37,500.00	0.00	6,000.00	43,500.00
3. Edgardo F. Garcia	46,875.00			46,875.00
4. Lutgarda B. Peralta	61,875.00			61,875.00
5. Jesus S. Guevara	37,500.00			37,500.00
6. Reynaldo G. David	46,875.00			46,875.00
<b>TOTAL</b>	<b>₱ 349,375.00</b>	<b>₱ 95,000.00</b>	<b>₱ 6,000.00</b>	<b>₱ 450,375.00<sup>50</sup></b>

<b>Names Per DBP Payroll:</b>	<b>Officer's Allowance</b>	<b>Representation Allowance</b>	<b>Transportation Allowance</b>	<b>Total</b>
1. Clarito L. Magsino	₱ 264,000.00	₱ 51,000.00	₱ 51,000.00	₱ 366,000.00
2. Armando O. Samia	600,000.00	39,900.00	39,900.00	[678,900.00] <sup>51</sup>
3. Edgardo F. Garcia	1,374,000.00			1,374,000.00
4. Lutgarda B. Peralta	216,000.00			216,000.00
5. Jesus S. Guevara	600,000.00			600,000.00
6. Reynaldo G. David	689,400.00			689,400.00
<b>TOTAL</b>	<b>₱ 3,743,400.00</b>	<b>₱ 90,900.00</b>	<b>₱ 90,900.00</b>	<b>₱ [3,924,300.00]<sup>52</sup></b>

Auditor Abril concluded that the payment of additional allowances/fringe benefits to the DPB officers acting as officers of DBP subsidiaries has been disallowed in audit and the persons liable for the total

<sup>50</sup> Id. at 223.

<sup>51</sup> Sum should be ₱679,800.00 instead of ₱678,900.00 [₱600,000.00 + ₱39,900.00 + ₱39,900.00 = ₱679,800.00]. (Adjusted font size to fit in the margin.)

<sup>52</sup> Total should be ₱3,925,200.00 instead of ₱3,924,300.00 [₱3,743,400.00 + ₱90,900.00 + ₱90,900.00 = ₱3,925,200.00]; *rollo* (G.R. No. 210965), p. 224. (Adjusted font size to fit in the margin.)

disallowed amount of ₱1,629,303.34 are: (1) BOD; (2) certify payroll/HRM; (3) accountant; (4) cashier; (5) all payees per attached payrolls and schedules.

Nonetheless, while the Court affirms the COA decision, which sustained the disallowance of additional allowances and benefits to DBP officers, We disagree that the officials who approved or certified the grant of disallowed benefits should also be held liable.

In *Madera v. Commission on Audit*<sup>53</sup> (*Madera*), the Court provided the guidelines on the liability of government officials and employees affected by the disallowance of benefits and compensations that are upheld by the Court, thus:

In view of the foregoing discussion, the Court pronounces:

1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.
2. If a Notice of Disallowance is upheld, the rules on return are as follows:
  - a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.
  - b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following sections 2c and 2d.
  - c. Recipients – whether approving or certifying officers or mere passive recipients – are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.
  - d. The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other bona fide exceptions as it may determine on a case to case basis.<sup>54</sup>

<sup>53</sup> G.R. No. 244128, 08 September 2020.

<sup>54</sup> Id.

As explained in *Madera*, Sections 38<sup>55</sup> and 39<sup>56</sup> of the Administrative Code state that government officials who approved or certified the grant of disallowed benefits could only be civilly liable to return the amount thereof when they acted in evident bad faith, with malice, or if they were grossly negligent in the performance of their official duties.

Further, this Court accepted the following circumstances as badges of good faith that may be considered in favor of government officers who, in the performance of their official functions, approved, or certified the disallowed benefit:

x x x For one to be absolved of liability the following requisites [may be considered]: (1) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent disallowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality.<sup>57</sup>

*Madera* also added that these badges of good faith should be considered first before holding these officers, whose participation in the disallowed transaction was in the performance of their official duties, liable; and that the presence of any of these factors in a case may tend to uphold the presumption of good faith in the performance of official functions accorded to the officers involved.<sup>58</sup>

In this case, there are badges of good faith that may be appreciated in favor of the approving/certifying officers. In particular, We find that the approving/certifying officers believed in good faith that the recipients of the allowances are entitled thereto, and that the grant of such allowances was in accordance with their by-laws, since it has been their practice for many years, for which they have never been cited for violation by COA until this case. Finally, it appears that at the time the disallowed benefits were given, there was still no precedent disallowing a similar case in jurisprudence.

<sup>55</sup> SECTION 38. Liability of Superior Officers. – (1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.

x x x x

(3) A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence, or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.

<sup>56</sup> SECTION 39. Liability of Subordinate Officers. – No subordinate officer or employee shall be civilly liable for acts done by him in good faith in the performance of his duties. However, he shall be liable for willful or negligent acts done by him which contrary to law, morals, public policy and good customs even if he acted under the orders or instructions of his superiors.

<sup>57</sup> J. Leonen, Separate Concurring Opinion, *Madera v. Commission on Audit*; supra note 8.

<sup>58</sup> *Madera v. Commission on Audit*, supra note 33.

Recently, a similar finding of good faith was made by the Court in *Development Bank of the Philippines v. Commission on Audit*.<sup>59</sup>

It should be emphasized, however, that good faith on the part of the approving/certifying officers in granting such allowances does not make it legal or proper as would justify its continued grant. Neither the corporate by-laws nor the subsequent approval or confirmation by former President Arroyo (which was done during the prohibited period before a regular election) exempt DBP officers from the constitutional prohibition on double and additional compensation.

In *Oriondo v. Commission on Audit*,<sup>60</sup> the Court upheld the disallowance of the honoraria and cash gifts received by officers and personnel of the Philippine Tourism Authority (PTA) for rendering services to the Corregidor Foundation, Inc. since this would be tantamount to payment of additional compensation proscribed in Article IX-B, Section 8 of the Constitution. The Court stressed that petitioners therein knew fully well that they serve in Corregidor Foundation, Inc., by reason of their office in the PTA, and that as officers and personnel of the Philippine Tourism Authority, they already received honoraria and cash gifts.<sup>61</sup>

Similarly, in *National Electrification Administration v. Civil Service Commission*,<sup>62</sup> the Court ruled that payment to National Electrification Administration personnel designated to cooperatives of allowances and other benefits on top of their regular salaries from NEA violates its own charter, as well as Section 8, Article IX-B of the Constitution, which proscribes additional, double, or indirect compensation.

Thus, We affirm the COA decision disallowing the additional allowances and benefits to DBP officers because this amounts to double compensation and is prohibited under Section 8, Article IX (B) of the Constitution. However, the officers who approved or certified the grant of disallowed benefits should not be held liable.

*G.R. No. 217623*

We find no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of COA in affirming the disallowance of the grant of merit increase to DBP officers and employees, integration of officers' allowance to basic pay, and grant of economic assistance to DBP employees.

<sup>59</sup> 827 Phil. 818 (2018).

<sup>60</sup> G.R. No. 211293, 04 June 2019.

<sup>61</sup> Id.

<sup>62</sup> 624 Phil. 682 (2010).

COA is a constitutional office tasked to examine and audit all forms of government revenues and expenditures.<sup>63</sup> As the guardian of public funds, the Constitution vests COA with enough latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds.<sup>64</sup> The Court generally accords COA complete discretion in the exercise of its constitutional duty, and sustains its decisions in recognition of its expertise in the laws it is entrusted to enforce.<sup>65</sup> It is only when COA acts without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that the Court may grant a petition assailing COA's actions.<sup>66</sup> That is not the case here.

Contrary to petitioner's assertion, the authority of DBP BOD to fix the remuneration and other emoluments of the officers and employees of DBP, as provided under Section 13<sup>67</sup> of DBP Revised Charter,<sup>68</sup> is not absolute. Even as DBP's charter exempts it from the coverage of the Salary Standardization Law, this does not mean that DBP BOD has unbridled authority to fix the compensation plan of its officers and employees. In *Development Bank of the Philippines v. Commission on Audit*,<sup>69</sup> the Court explained:

Notably, while Sec. 13 of DBP's charter as amended on February 14, 1998, exempts it from existing laws on compensation and position classification, it concludes by expressly stating that DBP's system of compensation shall nonetheless conform to the principles under the SSL. From this, there is no basis to conclude that the DBP's BOD was conferred unbridled authority to fix the salaries and allowances of its officers and

<sup>63</sup> CONSTITUTION, Article IX, Sec. 2 (1).

<sup>64</sup> *Padilla v. Commission on Audit*, G.R. No. 244815, 02 February 2021; *Philippine Health Insurance Corp. Regional Office-Caraga v. Commission on Audit*, 838 Phil. 600 (2018).

<sup>65</sup> *Technical Education and Skills Development Authority v. Commission on Audit*, 729 Phil. 60 (2014).

<sup>66</sup> *Id.*

<sup>67</sup> Section 6. [Amending Section 13 of Executive Order No. 81]:

Section 13. Other Officers and Employees. — The Board of Directors shall provide for an organization and staff of officers and employees of the Bank and upon recommendation of the President of the Bank, fix their remunerations and other emoluments. All positions in the Bank shall be governed by the compensation, position classification system and qualification standards approved by the Board of Directors based on a comprehensive job analysis of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plans in the private sector and shall be subject to periodic review by the Board of Directors once every two (2) years, without prejudice to yearly merit or increases based on the Bank's productivity and profitability. The Bank shall, therefore, be exempt from existing laws, rules, and regulations on compensation, position classification and qualification standards. **The Bank shall however, endeavor to make its system conform as closely as possible with the principles under Compensation and Position Classification Act of 1989 (Republic Act No. 6758, as amended).**

No officer or employee of the Bank subject to Civil Service Law shall be dismissed except for cause as provided by law. (Emphasis supplied)

<sup>68</sup> Republic Act No. 8523, entitled An Act Strengthening the Development Bank of the Philippines, Amending for the Purpose Executive Order No. 81.

<sup>69</sup> G.R. No. 210838, 03 July 2018. 835 Phil. 268 (2018).



employees. The authority granted DBP to freely fix its compensation structure under which it may grant allowances and monetary awards remains circumscribed by the SSL; it may not entirely depart from the spirit of the guidelines therein.

The policy requiring prior Presidential approval upon recommendation from the Secretary of Budget as provided in PD 1597, with respect to the grant of allowances and benefits, was re-affirmed by the Congress in 2009 through *Joint Resolution No. 4*, also known as the *Salary Standardization Law III* which provides that the “coverage, conditions for the grant, including the rates of allowances, benefits, and incentives to all government employees, shall be rationalized in accordance with the policies to be issued by the President upon recommendation of the Department of Budget and Management.” This policy mirrors MO No. 20 issued earlier in 2001, which directed the heads of government-owned and controlled corporations, government financial institutions (GFIs), and subsidiaries exempted from the SSL to implement pay rationalization in all senior officer positions.

Clearly, DBP BOD’s power to fix personnel compensation must still conform as closely as possible with the principles under the Salary Standardization Law, and any disbursements of allowances and other forms of employee compensation must be in accord with the prevailing rules and regulations issued by the President of the Philippines and/or the Department of Budget and Management.<sup>70</sup> As the Court further elucidated in *Philippine Economic Zone Authority v. Commission on Audit*:<sup>71</sup>

**x x x [T]he charters of those government entities exempt from the Salary Standardization Law is not without any form of restriction. They are still required to report to the Office of the President, through the DBM the details of their salary and compensation system and to endeavor to make the system to conform as closely as possible to the principles and modes provided in Republic Act No. 6758.** Such restriction is the most apparent indication that the legislature did not divest the President, as Chief Executive of his power of control over the said government entities. In *National Electrification Administration v. COA*, this Court explained the nature of presidential power of control, and held that the constitutional vesture of this power in the President is self-executing and does not require statutory implementation, nor may its exercise be limited, much less withdrawn, by the legislature.

It must always be remembered that under our system of government all executive departments, bureaus and offices are under the control of the President of the Philippines. This precept is embodied in Section 17, Article VII of the Constitution which provides as follows:

<sup>70</sup> *Philippine Health Insurance Corp. v. Commission on Audit*, G.R. No. 222129, 02 February 2021.

<sup>71</sup> 797 Phil. 117 (2016).

Sec. 17. The President shall have control of all the executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed.

**Thus, respondent COA was correct in claiming that petitioner has to comply with Section 3 of M.O. No. 20 dated June 25, 2001 which provides that any increase in salary or compensation of GOCCs/GFIs that is not in accordance with the Salary Standardization Law shall be subject to the approval of the President. The said M.O. No. 20 is merely a reiteration of the President's power of control over the GOCCs/GFIs notwithstanding the power granted to the Board of Directors of the latter to establish and fix a compensation and benefits scheme for its employees. (Emphasis supplied; citations ommitted.)**

In this case, the COA disallowed the grant of merit increases and other additional compensation or allowances because these were not specifically authorized by existing laws. While the DBP BOD is authorized by the Revised DBP Charter to adopt and fix additional compensation, the COA stressed that the grant of the disallowed benefits did not have the requisite approval of the president as required by PD 1597 and MO No. 20.<sup>72</sup>

Petitioner argues that the presidential approval obtained by DBP on 22 April 2010 validates the grant of merit increase to DBP officers and employees, integration of officers' allowance to basic pay, and grant of economic assistance to DBP employees, which COA previously disallowed.<sup>73</sup>

We disagree.

In *Philippine Health Insurance Corp. v. Commission on Audit*,<sup>74</sup> the Court reiterated that the presidential approval of a new compensation and benefit scheme, including the grant of allowances that are unauthorized by law should not stop the State from correcting the erroneous application of a statute. The Court stated:

Neither can PhilHealth find solace in the alleged approval or confirmation by former President Gloria Macapagal-Arroyo of PhilHealth's fiscal autonomy through two executive communications relative to its request to exercise fiscal authority in line with the PhilHealth Rationalization Plan. We observe that the alleged presidential approval was merely on the marginal note of the said communications and was never reduced in any formal memorandum. So, too, the Court has previously held in BCDA that the presidential approval of a new

<sup>72</sup> *Rollo* (G.R. No. 210965), pp. 42-43; *rollo* (G.R. No. 217623), p. 85.

<sup>73</sup> *Rollo* (G.R. No. 217623), p. 368-369.

<sup>74</sup> 839 Phil. 573 (2018), citing *Bases Conversion and Development Authority v. Commission on Audit*, 599 Phil. 455 (2009).

compensation and benefit scheme which included the grant of allowances found to be unauthorized by law shall not estop the State from correcting the erroneous application of a statute. (Citations omitted.)

In this case, the alleged presidential approval of then President Arroyo was in the form of the president's signature affixed at the end of DBP's letter dated 22 April 2010 addressed to the president, seeking the president's confirmation of DBP Board's authority to approve compensation plan for DBP personnel.

Moreover, as noted by COA, the President's approval was made on 22 April 2010, merely 18 days<sup>75</sup> before the 10 May 2010 National and Local Elections. Under Section 261 (g)(2)<sup>76</sup> of Batas Pambansa Blg. 881, otherwise known as the "Omnibus Election Code of the Philippines", the grant of increase of salary or remuneration or privilege to any government official or employee is prohibited during the period of 45 days before a regular election. Thus, President Arroyo's approval of DBP's authority to approve the compensation plan is clearly void because it was made within the prohibited 45-day period before the 10 May 2010 elections. That the benefits approved refer to benefits implemented long before the president's approval during the prohibited period does not make such approval valid. It bears stressing that petitioners precisely sought the president's approval or confirmation to validate the unauthorized grant of merit increases, economic assistance, and integration of officers' allowance.

Nevertheless, while We sustain the disallowance of the grant of merit increase to DBP officers and employees, integration of officers' allowance to basic pay, and grant of economic assistance to DBP employees, We hold that the officers who approved or certified the grant of disallowed benefits should not be held liable. Like Our observations in G.R. No. 210965, the approving/certifying officers acted in good faith, relying on their exemption from the Salary Standardization Law and believing that they were authorized under the Revised DBP Charter to approve the compensation plan for the DPB personnel, including the grant of economic assistance and merit increases, even without presidential approval.

<sup>75</sup> COA erroneously stated that the presidential approval on 22 April 2010 was 17 days before the 10 May 2010 Elections.

<sup>76</sup> Section 261. Prohibited Acts. – The following shall be guilty of an election offense:

x x x x

(g) Appointment of new employees, creation of new position, promotion, or giving salary increases. – During the period of forty-five days before a regular election and thirty days before a special election, x x x .

(2) Any government official who promotes, or gives any increase of salary or remuneration or privilege to any government official or employee, including those in government-owned or controlled corporations. (Par. (f), Sec. 178, 1978 EC)

*The individual payees or recipients remain liable for the amounts they personally received*

In both petitions, DBP officers who received the allowances and benefits are still obligated to return what they personally received. In *Madera*, the Court finally veered away from the previously prevalent “good faith doctrine” applied in exonerating passive recipients and returned to the basic standpoint of applying the principles of *solutio indebiti* and unjust enrichment in determining liability for disallowed amounts.<sup>77</sup> The Court reinforced its view that the receipt by the payees of disallowed benefits is one by mistake, thus creating an obligation on their part to return the same.

Nevertheless, despite the deletion of good faith as a defense available to passive-recipients, their liability to return disallowed benefits may still be excused based on these grounds now embodied in Rules 2c and 2d of the *Madera* Rules: (1) when the amount disbursed was genuinely given in consideration of services rendered; (2) when undue prejudice will result from requiring payees to return; and (3) where social justice or humanitarian considerations are attendant, or there are other *bona fide* exceptions as may be determined on a case to case basis.<sup>78</sup>

None of these exceptions are present here.

In *Abellanosa v. Commission on Audit*<sup>79</sup> (*Abellanosa*), the Court ruled that before an incentive is deemed “genuinely given in consideration of services rendered,” the legality of the expenditure should first be considered. This “legality” includes compliance with all the legal conditions for the disbursement. Further, the disallowance should have been the result of some procedural error not affecting the genuineness of the payout. These circumstances would show that the payees would have no issue receiving the benefit disallowed were it not for that minor mistake. Finally, aside from having proper basis in law, the disallowed incentive or benefit must have a clear, direct, reasonable connection to the actual performance of the payee-recipient's official work and functions.<sup>80</sup>

Here, the disallowed benefits clearly lacked legal cover as it violated not only PD 1597 and MO 20 but also the Constitution. That alone disqualifies the subject benefits and allowances from being considered as genuinely given in consideration of services rendered.

<sup>77</sup> *Madera v. Commission on Audit*, *supra* note 33.

<sup>78</sup> *Id.*

<sup>79</sup> G.R. No. 185806, 17 November 2020.

<sup>80</sup> *Id.*


Neither could the payees be exonerated on the grounds of undue prejudice, social justice, humanitarian considerations, or other *bona fide* exceptions. *Abellanosa* instructs Us that to merit the payees' exonerated, these considerations must be highly exceptional to strongly compel the Court "to prevent a clear inequity arising from a directive to return."<sup>81</sup> No such extraordinary or highly meritorious considerations exist here especially considering that the benefits received were deemed additional or double compensation in favor of the recipients.

**WHEREFORE**, the petitions are **PARTIALLY GRANTED**.

1. In **G.R. No. 210965**, the Decision dated 13 March 2012 and Resolution dated 06 December 2013 of the Commission on Audit, affirming the Notice of Disallowance No. SUB-2006-11 (6) in the amount of ₱1,629,303.34, are **AFFIRMED with MODIFICATION**. The approving/certifying officers are exonerated from their solidary liability to return the disallowed amount. The DBP officers who received the allowances and fringe benefits disallowed under Notice of Disallowance No. SUB-2006-11 (6), including the approving/certifying officers who had received the disallowed amounts in their capacity as payees, are **ORDERED** to refund the amount they received.

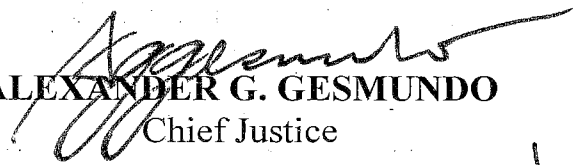
2. In **G.R. No. 217623**, the Decision dated 03 December 2013 and Resolution dated 17 March 2015 of the Commission on Audit, affirming the Notice of Disallowance Nos. OA-2006-006 (06), EA-2006-005 (05 and 06) and Merit-2006-008 (06), disallowing the total amount of ₱106,599,716.93, are **AFFIRMED with MODIFICATION**. The approving/certifying officers are exonerated from their solidary liability to return the disallowed amount. The DBP officers and employees who received the Officers' Allowance, Economic Assistance, and Merit Increase disallowed under Notice of Disallowance Nos. OA-2006-006 (06), EA-2006-005 (05 and 06) and Merit-2006-008 (06), including the approving/certifying officers who had received the disallowed amounts in their capacity as payees, are **ORDERED** to refund the amount they received.

**SO ORDERED.**


  
**RODIL V. ZALAMEDA**  
Associate Justice

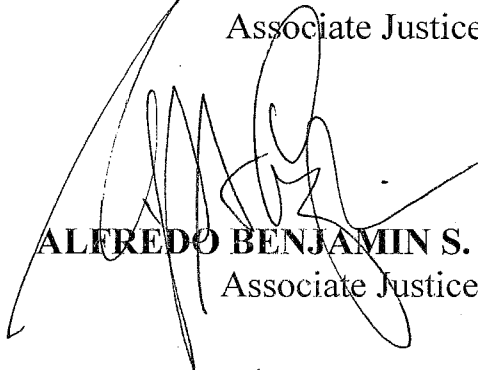
<sup>81</sup> Id.

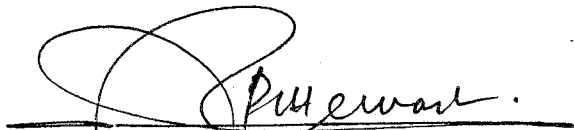
**WE CONCUR:**


  
**ALEXANDER G. GESMUNDO**  
 Chief Justice


(On Official Leave)  
**ESTELA M. PERLAS-BERNABE**  
 Associate Justice

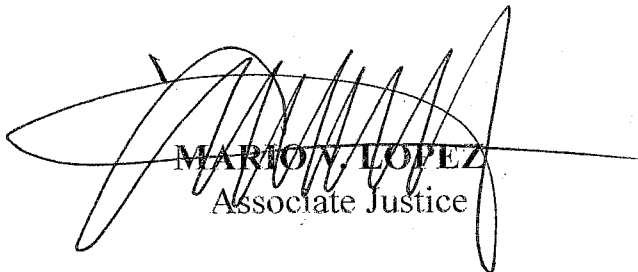
  
**MARVIC M.V.F. LEONEN**  
 Associate Justice

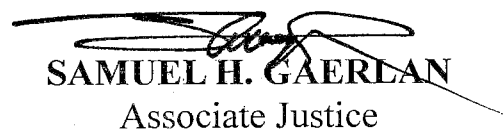
  
**ALFREDO BENJAMIN S. CAGUIOA**  
 Associate Justice

  
**RAMON PAUL L. HERNANDO**  
 Associate Justice

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

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

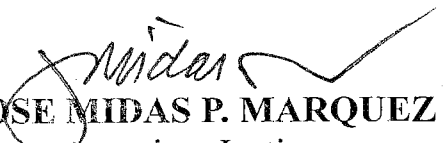
  
**MARIO N. LOPEZ**  
 Associate Justice

  
**SAMUEL H. GAERLAN**  
 Associate Justice

  
**RICARDO R. ROSARIO**  
 Associate Justice

  
**JHOSEP V. LOPEZ**  
 Associate Justice

(On Official Business)  
**JAPAR B. DIMAAMPAO**  
 Associate Justice

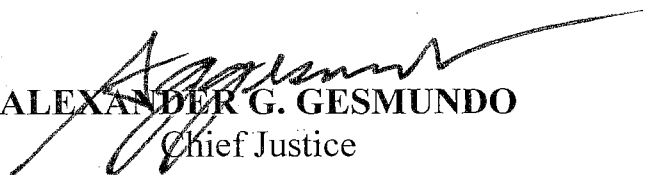
  
**JOSE MIDAS P. MARQUEZ**  
 Associate Justice

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



**CERTIFICATION**

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

  
**ALEXANDER G. GESMUNDO**  
Chief Justice

