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[G.R. No. 200418. November 10, 2020]

CONFEDERATION FOR UNITY, RECOGNITION AND ADVANCEMENT OF GOVERNMENT EMPLOYEES [COURAGE], represented by its National President FERDINAND GAITE, 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*.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT'S JURISDICTION; REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR CERTIORARI AND PROHIBITION; THE SUPREME COURT HAS ORIGINAL JURISDICTION OVER PETITIONS FOR CERTIORARI AND PROHIBITION ASSAILING ACTS DONE IN THE EXERCISE OF JUDICIAL, QUASI-JUDICIAL, OR MINISTERIAL FUNCTIONS. — The Constitution [Art. VIII, Section 5(1)] itself confers upon this Court original jurisdiction over petitions for certiorari, prohibition, mandamus, *quo warranto*, and *habeas corpus*. In this regard, Rule 65 of the Rules of Court enumerates the requisites of a petition for certiorari and prohibition. The rules require that the acts to be

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assailed were done in the exercise of judicial, quasi-judicial, or ministerial functions[.]

2. ID.; ID.; ID.; ID.; ID.; ID.; QUASI-JUDICIAL FUNCTIONS DISTINGUISHED FROM QUASI-LEGISLATIVE FUNCTIONS. — Quasi-judicial or adjudicatory functions refer to "the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law." Quasi-legislative or rule-making functions refer to "the power to make rules and regulations which results in delegated legislation that is within the confines of the granting statute and the doctrine of non-delegability and separability of powers."

3. ID.; ID.; ID.; ID.; ID.; ID.; ID.; THE NATURE OF THE GOVERNMENTAL FUNCTIONS AFFECTS THE AVAILABLE REMEDIES TO ASSAIL AN ACT. — The nature of the governmental functions affects the available remedies of those who seek to assail an act. Rule 65 specifies that the remedy of certiorari assails acts in the exercise of judicial and quasi-judicial functions, with the addition of ministerial functions for the remedy of prohibition.

In several cases, this Court has dismissed petitions for certiorari and prohibition for being the wrong remedy to assail the issuance of an executive order, department order, and a republic act, as these were not done in the exercise of judicial or quasi-judicial functions.

4. ID.; ID.; ID.; POWER OF JUDICIAL REVIEW; GRAVE ABUSE OF DISCRETION; THE SUPREME COURT MAY EXERCISE THE POWER OF JUDICIAL REVIEW TO CORRECT GRAVE ABUSES OF DISCRETION REGARDLESS OF THE NATURE OF THE ASSAILED GOVERNMENTAL FUNCTION. — [T]he power of judicial review in Article VIII, Section 1 of the Constitution contemplates the correction, by way of petitions for certiorari and prohibition, of grave abuses of discretion by any governmental branch or instrumentality. This may lie even if no judicial, quasi-judicial, or ministerial function was exercised.

. . .

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Thus, if any governmental branch or instrumentality is shown to have gravely abused its discretion amounting to lack or excess of jurisdiction, and has overstepped the delimitations of its powers, courts may "set right, undo, or restrain" such act by way of certiorari and prohibition.

5. ID.; ID.; ID.; ID.; REQUISITES OF JUSTICIABILITY; ONLY CONCRETE CONTROVERSIES MAY BE THE SUBJECT OF JUDICIAL REVIEW. — But even as this Court is vested with judicial power, it does not follow that we should resolve every question we may have the authority to answer. The Constitution grants the Judiciary the power to mediate the boundaries of the government's powers, but this mediation is circumscribed by the will of the people, in whom sovereignty resides, as expressed by their representatives in the executive and legislative branches. This Court's place in the constitutional order requires that we "decide on legal principle only in concrete controversies": . . .

For this reason, the requisites of justiciability, long established in our jurisprudence, must be present in the cases this Court resolves:

> As a rule, "the constitutionality of a statute will be passed on only if, and to the extent that, it is directly and necessarily involved in a justiciable controversy and is essential to the protection of the rights of the parties concerned." A controversy is said to be justiciable if: first, there is an actual case or controversy involving legal rights that are capable of judicial determination; second, the parties raising the issue must have standing or locus standi to raise the constitutional issue; third, the constitutionality must be raised at the earliest opportunity; and fourth, resolving the constitutionality must be essential to the disposition of the case.

6. ID.; ID.; ID.; ID.; ID.; ACTUAL CASE; JUDICIAL REVIEW REQUIRES THE EXISTENCE OF AN ACTUAL CASE OR CONTROVERSY INVOLVING RIGHTS WHICH ARE LEGALLY DEMANDABLE AND ENFORCEABLE. — An actual case exists "when the act being challenged has had a direct adverse effect on the individual challenging it." Thus, actual case means the presence of that concrete adverseness that can be drawn from the allegations raised by the parties in their pleadings:

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. . .

Laws are general in nature. The courts' constitutional duty is "to settle actual controversies involving rights which are legally demandable and enforceable[.]" Courts cannot and will not decide hypothetical issues, render advisory opinions, or engage academic questions. The parties must present concrete facts that demonstrate the problems vis-à-vis a legal provision. The parties represented must show the contradicting considerations as a result of the alleged facts. Absent such actual case anchored on concrete adverseness, no factual basis exists for giving a petition due course.

7. ID.; ID.; ID.; ID.; ID.; REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; REPRESENTATIVE PARTIES; LEGAL STANDING; AN ORGANIZATION INTENDING TO ACT ON BEHALF OF ITS MEMBERS MUST CONVINCINGLY SHOW THAT SUCH REPRESENTATION WOULD BE MORE EFFICIENT THAN JUST SOME OF THE MEMBERS SUING AND DEFENDING ON BEHALF OF ALL THE MEMBERS. — Legal standing means "personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged." That the party must present a personal stake in the case ensures the presence of concrete adverseness:

. . .

Nearly all of the petitioners here are organizations purporting to act on behalf of other organizations. Generally, representative parties such as organizations cannot be surrogates for the real party in interest suffering the actual injury. Should they desire to act as such, they must convincingly show that their representation through one voice would be more efficient than just some of the members suing and defending on behalf of all the members.

8. ID.; ID.; ID.; ID.; ID.; ID.; LABOR ORGANIZATIONS HAVE THE RIGHT TO REPRESENT ITS MEMBERS IN COLLECTIVE BARGAINING AND OTHER ACTIVITIES BENEFICIAL TO THEM. — [L]abor organizations occupy a unique position in that they have the constitutional [Article XIII, Section 3 of the Constitution] and statutory right and duty to represent the workers within their membership.

. . .

Article 242 of the Labor Code, as amended, provides that a labor organization has the right to represent its members in collective bargaining, and to undertake all activities to benefit the organization and its members:

. . .

Labor organizations also ensure that workers participate in decision-making processes that affect their rights, duties, and welfare.

9. ID.; ID.; ID.; ID.; ID.; ID.; AN ORGANIZATION OF GOVERNMENT EMPLOYEES HAS LEGAL STANDING TO REPRESENT ITS MEMBERS AND TO ASSAIL ISSUANCES THAT MAY JEOPARDIZE THEIR INTERESTS. — [T]hough not to the same extent as private employees, the right to self-organize is likewise granted to government employees. Petitioner SWEAP-DSWD is one such organization. It may act to protect its members' interests in CNAs, which includes acting to contest issuances that may jeopardize these interests. It has the legal standing to bring their Petition to this Court.

10. ID.; ID.; ID.; ID.; ID.; RIPENESS OF THE CASE; THE CHALLENGED GOVERNMENTAL ACT SHOULD BE A COMPLETED GOVERNMENTAL ACTION THAT HAS A DIRECT, CONCRETE, AND ADVERSE EFFECT ON THE PETITIONER. — As for the third requisite: "A case is ripe for adjudication when the challenged governmental act is a completed action such that there is a direct, concrete, and adverse effect on the petitioner."

Closely linked with the requisite of an actual case, ripeness pertains to the challenged governmental act having reached the state where it is neither anticipatory nor too late, but rather, necessary for the Judiciary to intervene[.]

11. ID.; ID.; ID.; ID.; ID.; ID.; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; ALL THE ADMINISTRATIVE REMEDIES MUST FIRST BE EXHAUSTED BEFORE COMING TO COURT. — Ripeness must be viewed in light of the doctrine on exhaustion of administrative remedies. Before judicial intervention, the challenged act must fulfill the prerequisite that another

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governmental branch or instrumentality has already performed the act; the petitioner has immediately suffered or is threatened to suffer injury due to the act; and no more succor is found in another branch or instrumentality. The doctrine "does not warrant a court to arrogate unto itself the authority to resolve, or interfere in, a controversy the jurisdiction over which is lodged initially with an administrative body"; rather, it is anchored on comity, respect, and convenience:

. . .

Our Constitution should also be read by the executive branch. The doctrine demands deference to co-equal departments, allowing the appropriate authorities the opportunity "to act and correct the errors committed in the administrative forum."

Petitioners here failed to exhaust all the administrative remedies before coming to this Court.

Aside from Budget Circular No. 2011-5, petitioners also question the constitutionality of the January 20, 2012 Memorandum signed by Assistant Secretary David-Casis. The Memorandum does not show any signature of approval or conforme by respondent Secretary Soliman.

Petitioners should have allowed the administrative process to run its course by first questioning the validity of the Memorandum, along with the Assistant Secretary's authority, before respondent Secretary Soliman. The Secretary's action may, in turn, be appealed to the Office of the President.

True, the doctrine on exhaustion of administrative remedies does not apply when the assailed act was done in the exercise of quasi-legislative or rule-making functions. Yet, the January 20, 2012 Memorandum, which directs the refund of excess CNA incentive, cannot be an exercise of quasi-legislative functions only when it created an imperative obligation upon the affected employees.

This Court has dismissed petitions, explaining that "liberality and the transcendental doctrine cannot trump blatant disregard of procedural rules," more so when "the petitioner had other available remedies[.]"

The mere issuance of a regulation does not justify an immediate resort to this Court. Petitioner DSWD-SWEAP could

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have availed of administrative remedies before respondent Secretary Soliman, and then before the Office of the President.

12. ID.; ID.; ID.; ID.; ID.; *LIS MOTA* REQUIREMENT; THE CONSTITUTIONAL ISSUE MUST BE THE *LIS MOTA* OF THE CASE. — When the unconstitutionality of a governmental act is raised as a ground for judicial review, the constitutional issue must be properly presented, and its resolution must be necessary for a complete determination of the case. In other words, the constitutional question must be the *lis mota* of the case; otherwise, the issues may be resolved and reliefs may be granted on some other ground.

13. ID.; ID.; ID.; DOCTRINE OF HIERARCHY OF COURTS; EVERY LEVEL OF THE JUDICIARY MUST BE ABLE TO FOCUS ON PERFORMING ITS DESIGNATED FUNCTIONS WITHIN THE JUDICIAL SYSTEM. — The regional trial courts, the Court of Appeals, and this Court all have original jurisdiction to issue writs of certiorari and prohibition. The doctrine on hierarchy of courts ensures that every level of the Judiciary can focus on effectively and efficiently performing its designated functions within the judicial system: Territorially organized trial courts weigh evidence and rule on factual issues; the Court of Appeals reviews these findings as a collegiate body; and this Court leads the Judiciary by resolving constitutional questions and promulgating doctrinal devices.

14. ID.; ID.; ID.; ID.; EXCEPTIONS TO THE DOCTRINE OF HIERARCHY OF COURTS; DIRECT RESORT TO THE SUPREME COURT REQUIRES IMPORTANT REASONS, SUCH AS JUDICIAL ECONOMY. — Nevertheless, exceptions exist. This Court can exercise its discretionary power and assume jurisdiction over petitions filed directly before it when warranted. For one, a direct resort to this Court requires the existence of serious and important reasons:

. . .

These important reasons include the following: "(1) when dictated by the public welfare and the advancement of public policy; (2) when demanded by the broader interest of justice; (3) when the challenged orders were patent nullities; or (4) when analogous exceptional and compelling circumstances called for and justified the immediate and direct handling of the case."

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This Court has allowed petitions raising genuine issues of constitutionality against actions done by other branches of government and constitutional bodies. It has also assumed jurisdiction over cases of first impression and those of transcendental interest.

Benefits awarded to government employees come from public funds. The challenged Budget Circular No. 2011-5 affects all government employees with valid CNAs, allowing the grant of CNA incentives.

Concededly, no facts are disputed in this case that would burden this Court with the task of exhaustively examining evidentiary matters, for which it is ill-equipped. In the interest of judicial economy, preventing further delay in the disposition of this case, we consider the merits.

15. ID.; ID.; BILL OF RIGHTS; RIGHT TO SELF-ORGANIZATION; THE RIGHT OF GOVERNMENT EMPLOYEES TO SELF-ORGANIZE IS NOT AS EXTENSIVE AS IN THE PRIVATE SECTOR. — The 1987 Constitution [declares] that "[t]he right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged." The State "shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law." Article IX-B on the Civil Service Commission also states that "[t]he right to self-organization shall not be denied to government employees."

Nonetheless, in the 1990 case of *Arizala v. Court of Appeals*, this Court reiterated that the right of government employees to self-organize is not as extensive as in the private sector:

. . .

Employees in the private sector have the right to self-organize for purposes of collective bargaining, among others. The Labor Code governs collective bargaining for private employees. Collective bargaining agreements include grants of employee benefits.

Employees in the public sector also have the right to self-organize. Executive Order No. 180 governs their right to organize

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"for the furtherance and protection of their interests." However, collective negotiation agreements include employment terms and conditions not fixed by law[.]

16. ID.; ID.; ID.; ID.; RIGHT TO COLLECTIVE NEGOTIATION IN THE PUBLIC SECTOR; GUIDELINES ON THE BASIC CONCEPT OF COLLECTIVE NEGOTIATIONS AGREEMENT (CNA). — The following guidelines on the basic concept of CNA negotiations take into account the relevant provisions of the Constitution, statutes, their implementing rules and regulations, as well as jurisprudence on the matter:

a) The right to collective negotiation in the public sector is a constitutionally protected right subject to the conditions stated in the Constitution and as may be provided supplementarily by law;
b) All CNAs negotiated must be consistent with law and implementing regulations;
c) The flexibilities of government agencies are limited by law. Wage benefits are subject to the Salary Standardization Law. Non-wage benefits are subject to regulations issued by the Civil Service Commission;
d) The grant of wage benefits is also subject to the constitutional and statutory authorizations for the use of appropriations and savings;
e) Unlike in the private sector, negotiations in the public sector must always consider the public interest and take the governmental role of the agency or office into primordial concern;
f) All employees are public officers and are thus subject to public trust and statutory limitations on matters including their conduct;
g) Incumbent heads of offices are temporary; and
h) Members of Congress, representing their constituents, including union members, can change the law.

17. ID.; ID.; ID.; ID.; ID.; CNA INCENTIVES; THE ₱25,000 CNA INCENTIVES CEILING IN DEPARTMENT OF BUDGET AND MANAGEMENT (DBM) CIRCULAR NO. 2011-5 CIRCULAR IS IN CONSONANCE WITH LAWS AND EXISTING RULES. — [W]e consider the relevant laws and regulations on government employees' right to organize and negotiate, specifically for CNA incentives.

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Executive Order No. 180 created the PSLMC as the body to implement and administer government employees' right to organize. Section 15 provides for its creation, stating that the PSLMC "shall promulgate the necessary rules and regulations to implement this Executive Order."

. . .

The Department of Budget and Management recognizes that Administrative Order No. 135, issued in 2005, merely "confirmed the grant of the CNA Incentive in strict compliance with the said PSLMC Resolutions[.]"

Pursuant to Section 15 of Executive Order No. 180, PSLMC issued several resolutions including PSLMC Resolution No. 4, series of 2002.

PSLMC Resolution No. 4 recognized this Court's ruling in *Social Security System*, which prohibited the grant of signing bonus by stating that, "during the negotiation, the parties may agree on some other kinds and forms of incentive to those who have contributed either in productivity or cost savings which are referred herein as CNA Incentive."

PSLMC Resolution No. 4 clearly limited the sources of the CNA incentive such that "only savings generated after the signing of the CNA may be used" for it. . . .

PSLMC Resolution No. 4 also provides that CNA incentives "can be paid every year that savings are generated during the life of the CNA." If the grant of CNA Incentive is disallowed, "the management shall be held personally responsible for the payment thereof."

Thus, Section 3.2 of Budget Circular No. 2011-5 — which limits the sources of CNA incentives "solely from agency savings from released Maintenance and Other Operating Expenses (MOOE) allotments for the year under review, limited to the MOOE Items in 3.3 hereof, still valid for obligation during the same year, subject to the following conditions" — is consistent with PSLMC Resolution No. 4.

. . .

Notably, the ₱25,000.00 ceiling amount under Section 3.5 of Budget Circular No. 2011-5 cannot be found in PSLMC

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Resolution No. 4. On this score, respondent Secretary Abad cites three laws as basis for the ceiling amount. . . .

. . .

Section 6 of Administrative Order No. 135, for its part, authorizes the grant of CNA incentives:

. . .

Following the mandate of Administrative Order No. 135, the Department of Budget and Management issued Budget Circular No. 2006-1, Circular Letter No. 2011-9, and the assailed Budget Circular No. 2011-5.

Respondent Secretary Abad adds that a CNA incentive ceiling is consistent with Administrative Order No. 135 by guarding against tendencies to manipulate the budget to accumulate savings:

. . .

This Court agrees. The ₱25,000.00 CNA incentive ceiling in Budget Circular No. 2011-5 is in consonance with law and existing rules.

18. ID.; ID.; ID.; ID.; ID.; ID.; THE DBM HAS AUTHORITY TO IMPOSE A BUDGET CEILING FOR CNA INCENTIVES UNDER THE LAW AND EXISTING RULES. — Executive Order No. 180 vested PSLMC with the power to promulgate rules to implement it. This, however, did not deprive the Department of Budget and Management of its power to issue rules on compensation as a result of collective negotiations between government employees' organizations and their employers.

As the governmental body that administers the national government's compensation and position classification system, the Department of Budget and Management controls the payment of compensation to all appointive and elective positions in government, including government-owned or controlled corporations and government financial institutions. . . .

Administrative Order No. 135 authorizes the grant of CNA incentives to "national government agencies (NGAs), local government units (LGUs), state universities and colleges (SUCs), government-owned or controlled corporations (GOCCs), and

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government financial institutions (GFIs), if provided in their respective CNAs and supplements thereto executed between the management and employees' organization accredited by the Civil Service Commission[.]" Its Section 6 grants the power to issue the policy and procedural guidelines to the Department of Budget and Management:

. . .

Clearly, in imposing a ₱25,000.00 budget ceiling for CNA incentives, the Department of Budget and Management acted within its authority granted by law and existing rules.

19. ID.; ID.; ID.; ID.; ADMINISTRATIVE LAW; EXECUTIVE ORDER NO. 180 (E.O. NO. 180); PUBLIC SECTOR LABOR MANAGEMENT COUNCIL (PSLMC); THE PSLMC's WORK ENHANCES THE PROTECTION OF GOVERNMENT EMPLOYEES' RIGHT TO ORGANIZE; THE DESIGNATION OF THE CIVIL SERVICE COMMISSIONER CHAIR AS PSLMC CHAIR IS CONSTITUTIONAL. — Section 15 of Executive Order No. 180, which designated the Civil Service Commission Chair as the PSLMC Chair, seemingly conflicts with the prohibitions imposed upon members of constitutional bodies designed to protect their independence. If such designation is unconstitutional, it puts into serious doubt the legality of PSLMC's acts.

For this reason, this Court resolves and confirms the validity of the designation of the Chair of the Civil Service Commission as the Chair of the PSLMC for being consistent with the Constitution.

The Civil Service Commission is an independent constitutional body governed by Article IX-B of the Constitution. It is composed of a Chairperson and two Commissioners, appointed by the President with the consent of the Commission on Appointments.
. . .

In *Funa v. Chairman, Civil Service Commission*, this Court held that Article IX-A, Section 2 of the Constitution must be read in conjunction with Article IX-B, Section 7, paragraph 2[.]

. . .

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Read together, the two constitutional provisions mean that the appointment of a member of a constitutional commission to any governing body must depend on the functions of the government entity on which that member sits. For the Civil Service Commission Chair, it must involve the career development, employment status, rights, privileges, and welfare of government officials and employees. . . .

Executive Order No. 180, which creates the PSLMC, and is reiterated in Book V, Title I, Chapter 6, Section 45 of the Administrative Code of 1987, is a law within the contemplation of the phrase "otherwise allowed by law or the primary functions of his position" in Article IX-B, Section 7, paragraph 2 of the Constitution. Book V, Title I-A, Chapter 3, Section 14 of the Administrative Code of 1987, as upheld in *Funa*, states that the Civil Service Commission Chair may be appointed to "governing bodies of government entities whose functions affect the career development, employment status, rights, privileges, and welfare of government officials and employees, . . . and such other similar boards as may be created by law."

Section 15 of Executive Order No. 180 envisioned a coordination body, considering its composition of Civil Service Commission Chair, along with the Secretaries of the Department of Labor and Employment, Department of Finance, Department of Justice, and Department of Budget and Management. Coordination between a constitutional commission and departments of the executive branch, so long as the coordination is not controlled by the executive branch, is not proscribed. With the Civil Service Commission Chair as PSLMC Chair, the PSLMC is not subordinated to the executive branch, and the independence of the Civil Service Commission is not undermined.

Moreover, the work of the PSLMC, through guidelines and other resolutions that implement Executive Order No. 180, enhances the protection of government employees' right to self-organize. Its mandate is well within the Civil Service Commission's primary functions, which encompass "the career development, employment status, rights, privileges, and welfare of government officials and employees" as contemplated in *Funa*. Since these primary functions are exercised through the Civil Service Commission Chair, the designation as PSLMC Chair, to oversee the implementation of Executive Order No. 180,

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does not violate Article IX-A, Section 2 in relation to Article IX-B, Section 7 of the Constitution.

20. ID.; APPROPRIATIONS; PROHIBITION AGAINST THE TRANSFER OF APPROPRIATIONS; SECTION 5, PSLMC RESOLUTION NO. 4; POWER OF THE PRESIDENT TO AUGMENT APPROPRIATIONS. — This case also raised the question of whether Section 5 of PSLMC Resolution No. 4 violated Article VI, Section 25(5) of the Constitution, which proscribes the transfer of appropriations. . . .

. . .

The proviso [in Article VI, Section 25(5), of the Constitution] that the enumerated persons "may, *by law*, be authorized to augment" means that their discretion to augment appropriations may be limited by law. Thus, Section 55 of the General Appropriations Act of 2012, on the "Rules in the Realignment of Savings for the Payment of Collective Negotiation Agreement Incentives," validly limits the President's discretion[.]

21. ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO COLLECTIVE BARGAINING AND NEGOTIATIONS; COLLECTIVE NEGOTIATIONS AGREEMENT (CNA) INCENTIVES; DBM BUDGET CIRCULAR NO. 2011-5; CONCEPT OF "VESTED RIGHTS" AS USED IN CASES ON EMPLOYEE BENEFITS; GOVERNMENT EMPLOYEES HAVE NO VESTED RIGHTS TO CNA INCENTIVES. — This Court rules that petitioners have no vested rights to CNA incentives. . . .

. . .

The concept of "vested right" has been used in cases on employee benefits. In *Boncodin v. NAPOCOR Employees Consolidated Union*, which involved salary step increments, this Court discussed:

> A vested right is one that is absolute, complete and unconditional; to its exercise, no obstacle exists; and it is immediate and perfect in itself and not dependent upon any contingency. To be vested, a right must have become a title — legal or equitable — to the present of future enjoyment of property.

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Labor cases have held that "where there is an established employer practice of regularly, knowingly and voluntarily granting benefits to employees over a significant period of time, despite the lack of a legal or contractual obligation on the part of the employer to do so, the grant of such benefits ripens into a vested right of the employees and can no longer be unilaterally reduced or withdrawn by the employer."

22. ID.; ID.; ID.; ID.; ID.; CNA INCENTIVE IS LINKED WITH AGENCY PERFORMANCE AND PRODUCTIVITY INTENDED TO BE CHARGED AGAINST AVAILABLE SAVINGS, AND ITS GRANT IS CONDITIONED ON THE APPLICABLE LAWS, RULES, AND REGULATIONS. — Petitioners now invoke their CNA, raising the non-impairment clause under the Constitution.

As contracts create the law between the parties, they produce binding juridical rights and obligations. The power of private individuals to enter into contracts is protected by their autonomy implicit in the constitutional guarantee of due process, among others, but subject to reasonable limitations by valid law.

This case involves the CNA incentive. CNA incentive is not compensation since Congress passed Republic Act No. 6758. It is not a signing bonus, since *Social Security System v. Commission on Audit* disallowed the grant of signing bonuses for government employees. It is not an award for service excellence since Civil Service Commission Memorandum No. 01, series of 2001, established the Program on Awards and Incentives for Service Excellence (PRAISE).

PSLMC Resolution No. 4 provides that "CNA Incentive is linked with agency performance and productivity," "intended to be charged against free unencumbered savings of the agency, which are no longer intended for any specific purpose." It is an incentive to produce efficiently by meeting targets and generating savings.

Thus, a CNA incentive is not per se vested. Its grant is conditioned on the applicable laws, rules, and regulations that govern it, including the assailed Budget Circular No. 2011-5 insofar as its provisions are consistent with PSLMC resolutions implementing Executive Order No. 180. For one, PSLMC Resolution No. 4 requires the existence of "savings generated after the signing of the CNA." Savings also depend on constitutional prerogatives.

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23. ID.; ID.; ID.; ID.; ID.; WHEN THE CEILING ON CNA INCENTIVES WAS IMPOSED AFTER SUCH BENEFIT HAD BEEN RELEASED AND RECEIVED BY THE EMPLOYEES, THE ORDER TO RETURN THE EXCESS IS VOID. — [W]e agree with petitioners' position against the retroactive application of Budget Circular No. 2011-5 to CNA incentives already released to the employees.

While the Department of Budget and Management can generally impose conditions for the grant of CNA incentives, in this case, the conditions were imposed after the benefits had already been released and received by the employees. The Department had not put in place a ceiling on CNA incentives when the ₱30,000.00 CNA incentive—the total amount from the October 26, 2011 and December 3, 2011 memoranda issued by respondent Secretary Soliman—was granted. Budget Circular No. 2011-5, which contains the ₱25,000.00 ceiling, was issued only on December 26, 2011 and published only on February 25, 2012. Thus, the benefits had already been vested in the employees' behalf.

Likewise, we confirm petitioners' argument that the January 20, 2012 Memorandum directing the refund of CNA incentives paid violated Section 43 of the General Appropriations Act of 2011.

. . .

As petitioners had argued, the list of allowable salary deductions in the General Appropriations Act does not include excess CNA incentives. We also note that the Memorandum should not have been authorized only by the Assistant Secretary, but must also bear the signature of approval and conforme of respondent Secretary Soliman.

Thus, the January 20, 2012 Memorandum, which required employees of the Department of Social Welfare and Development to refund the ₱5,000.00 excess through deductions from their salaries, is void.

APPEARANCES OF COUNSEL

National Union of People's Lawyers for petitioners.
The Solicitor General for respondents.

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D E C I S I O N

LEONEN, *J.*:

The grant of benefits to government employees under collective negotiation agreements is conditioned on all applicable laws, rules and regulations, including those issued by the Department of Budget and Management and the Public Sector Labor-Management Council.

This Court resolves a Petition for Certiorari/Prohibition with Prayer for Issuance of a Temporary Restraining Order and/or Writ of Preliminary/Mandatory Injunction[1] seeking to declare Department of Budget and Management Circular No. 2011-5 as unconstitutional, and to enjoin Social Welfare and Development Secretary Corazon Soliman (Secretary Soliman) from enforcing the Circular in her department.

The Circular in question had placed a ₱25,000.00 ceiling on the amount of the Collective Negotiations Agreement (CNA) incentive for 2011. The Department of Social Welfare and Development initially authorized the payment of CNA incentives in two tranches for 2011, totaling ₱30,000.00. It later issued a January 20, 2012 Memorandum directing its employees to refund the excess, prompting this Petition's filing.[2]

Petitioners before this Court pray that upon the filing of the Petition, a temporary restraining order and/or writ of preliminary injunction be issued enjoining the implementation of Budget Circular No. 2011-5, the January 20, 2012 Memorandum, and other issuances to enforce the Circular. They seek that, after notice and hearing, the Circular, as with the Memorandum, be declared void for being unconstitutional, contrary to law, or issued with grave abuse of discretion.[3]

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[1] Id. at 3-38. This Petition was filed under Rule 65 of the Rules of Court.

[2] *Rollo*, pp. 10-11.

[3] Id. at 33-34.

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Among the petitioners is the Social Welfare Employees Association of the Philippines (SWEAP-DSWD) which, on November 16, 2007, entered into a CNA with the Department of Social Welfare and Development's Management. This CNA would last for three years or until a new agreement is signed.[4] Article XI, Section 1 of the CNA grants a yearly cash incentive, pursuant to Budget Circular No. 2006-1,[5] which states:

> SECTION 1. The DEPARTMENT and the ASSOCIATION shall jointly institute cost-cutting measures to generate savings for the grant of yearly Collective Negotiation Agreement (C.N.A.) Cash Incentives in accordance with the provisions of Budget Circular No. 2006-1 dated February 1, 2006. For this purpose, the parties herein shall work together to generate savings and aim to *save at least 10%* of its MOOE from the regular programs/projects/activities of the Department.[6] (Emphasis supplied)

On September 29, 2011, the Department of Budget and Management issued Circular Letter 2011-9, with subject "Reminder on the Observance of the Guidelines on the Grant of the Collective Negotiation Agreement (CNA) Incentive."[7] Its Section 3.0 reiterates Budget Circular No. 2006-1 by mentioning the Senate and the House of Representatives' Joint Resolution No. 4, series of 2009, approving the grant of CNA incentives to both management and rank-and-file employees:

> 3.0. Pursuant to item (4)(h)(ii)(aa) of the Senate and House of Representatives Joint Resolution No. 4, s. 2009, the CNA Incentive may be granted to *both management and rank-and-file employees* of agencies with approved and successfully implemented CNAs in recognition of their joint efforts in accomplishing performance targets at lesser cost, and in attaining more efficient and viable operations

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[4] Id. at 111, Comment by respondent Secretary Florencio B. Abad; and *rollo*, p. 142, Comment by respondent Secretary Corazon J. Soliman.

[5] Id. at 111.

[6] Id. at 53. A copy of the CNA is attached as Annex B of the Petition.

[7] Id. at 111. *See* copy of the Circular Letter on <https://www.dbm.gov.ph/wp-content/uploads/Issuances/2011/Circular%20Letter/CL2011-9/cl2011-9.pdf> (last accessed on November 10, 2020).

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through cost-cutting measures and systems improvement. (Emphasis supplied)

On October 26, 2011, Secretary Soliman issued a Memorandum authorizing the CNA incentive grant of ₱10,000.00, "to be paid to existing regular, contractual and casual employees" and released not later than October 28, 2011.[8] On December 3, 2011, she issued another Memorandum for a second tranche of CNA incentive, worth ₱20,000.00, to be released on or before the third week of December 2011.[9]

On December 26, 2011, the Department of Budget and Management issued the assailed Budget Circular No. 2011-5, which provides the supplemental policy and procedural guidelines for the grant of CNA incentives.[10] Among others, it set a ₱25,000.00 ceiling on the amount of the CNA incentives for 2011:

> 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 per qualified employee.

On December 28, 2011, Social Welfare and Development Assistant Secretary Ma. Chona O. David-Casis (Assistant Secretary David-Casis) issued a Memorandum directing every employee to refund the CNA incentive received in excess of ₱25,000.00 through salary deductions.[11] Subsequently, she issued the assailed January 20, 2012 Memorandum, which directed the employees to refund the ₱5,000.00 received in excess, and to sign the conforme form consenting to the refund, made through monthly salary deductions of ₱500.00 for 10 months beginning February 2012.[12]

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[8] Id. at 57.

[9] Id. at 58.

[10] Id. at 60-62. *See* copy of the Budget Circular at <https:www.dbm.gov.ph/wp-content/uploads/2012/03/BC-2011-5pdf> (last accessed on November 10, 2020).

[11] Id. at 59.

[12] Id. at 63.

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Aggrieved, the associations filed this Petition[13] on February 21, 2012.

On March 28, 2012, petitioners filed an Urgent Motion for the Issuance of a Temporary Restraining Order/Writ of Preliminary Injunction (with Compliance to the Resolution dated February 28, 2012).[14] They cite cases[15] on the requisites of Rule 58, Section 3 of the Rules of Court for the issuance of a writ of preliminary injunction.[16]

In the same pleading, petitioners attached a copy of the Commission on Audit's March 14, 2002 Audit Observation Memorandum, where it had been observed that the ₱35,500.00 worth of CNA incentives paid to employees of the Protected Areas and Wildlife Bureau exceeded the ₱25,000.00 ceiling amount prescribed in Budget Circular No. 2011-5.[17]

In his Comment to the Urgent Motion, respondent Secretary Florencio Abad (Secretary Abad) of the Department of Budget and Management discussed that CNAs create no vested rights, and the grant of 2011 CNA incentives suffers from irregularities.[18] He submits that Budget Circular No. 2011-5 enjoys the presumption of regularity, and that this did not cause petitioners irreparable injury.[19]

Respondent Secretary Soliman manifested that she adopts her Comment to the Petition, which she says has extensively discussed the grounds to deny the prayer for injunctive relief. She reiterates the irrelevance of the refund in the attached Audit

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[13] Id. at 3-40.

[14] Id. at 70.

[15] The Urgent Motion cited cases including *Salting v. Velez*, 654 Phil. 117 (2011) [Per *J.* Nachura, Second Division].

[16] *Rollo*, pp. 71-75.

[17] Id. at 79-80.

[18] Id. at 186-191.

[19] Id. at 191-196.

Memorandum, since the Protected Areas and Wildlife Bureau is not a party to this case.[20]

This Court noted respondents' respective comments to the Petition[21] and the Urgent Motion.[22] Petitioners' Consolidated Reply[23] and the parties' respective memoranda[24] were likewise noted.

In a February 10, 2015 Resolution,[25] this Court included issues to be addressed for a complete resolution of the case, and the parties filed the required supplemental memoranda.[26]

The issues for this Court's resolution are the following:

First, whether or not petitioners have legal standing;

Second, whether or not petitioners violated the doctrine on the hierarchy of courts;

Third, whether or not petitioners availed the proper remedy, considering: (a) the doctrine on exhaustion of administrative remedies; (b) the requisites for availing the writs of certiorari and prohibition; (c) the requisites when invoking transcendental interest;

Fourth, whether or not the issuance of Budget Circular No. 2011-5 is within the jurisdiction and authority of respondent Secretary Abad;

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[20] Id. at 168.

[21] Id. at 173.

[22] Id. at 173 and 200.

[23] Id. at 231.

[24] Id. at 275, 309, and 358. Respondent Secretary Soliman's Memorandum dated July 9, 2013 was noted in the July 30, 2013 Resolution. Respondent Secretary Abad's Memorandum dated July 29, 2013 was noted in the August 27, 2013 Resolution. Petitioners' Memorandum dated July 10, 2014 was noted in the July 22, 2014 Resolution.

[25] Id. at 402-404.

[26] Id. at 417-442 and 445-493.

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Fifth, whether or not Budget Circular No. 2011-5's provisions limiting the source and amount of the CNA incentive are contrary to, or improperly amend, Administrative Order No. 135, series of 2005;

Sixth, whether or not Budget Circular No. 2011-5 modifies or nullifies provisions of validly executed CNAs and violates the constitutional provision on the non-impairment of obligations;

Seventh, whether or not petitioners have a vested right to CNA incentives;

Eighth, whether or not the January 20, 2012 Memorandum directing the refund violates Section 43 of the General Appropriations Act of 2011, which enumerates the allowed deductions from employees' salaries;

Ninth, whether or not Section 5 of Public Sector Labor-Management Council (PSLMC) Resolution No. 4, series of 2002, as well as subsequent issuances implementing this provision, is unconstitutional for violating Article VI, Section 25 (5) of the Constitution by:

a. authorizing the PSLMC to declare where savings are to be allocated; and/or

b. authorizing government agencies, instrumentalities, and offices other than the President, the Senate President, the House of Representatives Speaker, the Supreme Court Chief Justice, and the heads of constitutional commissions, to allocate savings by contract or collective negotiation agreements; and

Tenth, whether or not Section 15 of Executive Order No. 180, series of 1987, which created the PSLMC, is unconstitutional in that:

a. it subsumes the Civil Service Commission or its Chair under the executive branch to implement this law, in violation of Article IX-A, Section 1 of the Constitution; or

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b. it grants the Civil Service Commission or its Chair powers other than those enumerated under Article IX-B of the Constitution.

I

Any determination of whether this Court may answer a question posed to it begins with the issue of jurisdiction. Jurisdiction is the authority to hear and decide a case as conferred by the Constitution. Similarly, the Constitution grants Congress the power to "define, prescribe, and apportion"[27] the jurisdiction of various courts.[28]

The Constitution itself confers upon this Court original jurisdiction over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.[29] In this regard, Rule 65 of the Rules of Court enumerates the requisites of a petition for *certiorari* and prohibition. The rules require that the acts to be assailed were done in the exercise of judicial, quasi-judicial, or ministerial functions:

SECTION 1. *Petition for certiorari*.— When any tribunal, board or officer ***exercising judicial or quasi-judicial functions*** has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. ...

SECTION 2. *Petition for prohibition*.— When the proceedings of any tribunal, corporation, board, officer or person, whether ***exercising judicial, quasi-judicial or ministerial functions***, are without or in excess of its or his jurisdiction, or with grave abuse of discretion

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[27] CONST., art. VIII, Sec. 2.

[28] *First Sarmiento Property Holdings, Inc. v. Philippine Bank of Communications*, G.R. No. 202836, June 19, 2018, 866 SCRA 438 [Per J. Leonen, En Banc].

[29] CONST., art. VIII, sec. 5 (1).

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amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require[.] (Emphasis supplied)

Quasi-judicial or adjudicatory functions refer to "the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law."[30] Quasi-legislative or rule-making functions refer to "the power to make rules and regulations which results in delegated legislation that is within the confines of the granting statute and the doctrine of non-delegability and separability of powers."[31]

The nature of the governmental functions affects the available remedies of those who seek to assail an act. Rule 65 specifies that the remedy of certiorari assails acts in the exercise of judicial and quasi-judicial functions, with the addition of ministerial functions for the remedy of prohibition.

In several cases, this Court has dismissed petitions for certiorari and prohibition for being the wrong remedy to assail the issuance of an executive order,[32] department order,[33] and a

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[30] *Smart Communications, Inc. v. National Telecommunications Commission*, 456 Phil. 145, 156 (2003) [Per J. Ynares-Santiago, First Division].

[31] *Holy Spirit Homeowners Association, Inc. v. Secretary Defensor*,529 Phil. 573, 585 (2006) [Per J. Tinga, En Banc] citing *Smart Communications, Inc. v. National Telecommunications Commission*, 456 Phil. 145, 155 (2003) [Per J. Ynares-Santiago, First Division].

[32] *See Galicto v. Aquino III*, 683 Phil. 141 (2012) [Per J. Brion, En Banc]; *See also La Liga ng mga Barangay National v. City Mayor of Manila*, 465 Phil. 529 (2004) [Per C.J. Davide, En Banc].

[33] *See Dacudao v. Secretary of Justice*, 701 Phil. 96 (2013) [Per J. Bersamin, En Banc].

republic act,[34] as these were not done in the exercise of judicial or quasi-judicial functions.

Here, respondent Secretary Abad was exercising rule-making functions when he issued Budget Circular No. 2011-5. Several laws enumerating the Department of Budget and Management's powers and functions include providing guidelines for allowance grants to government employees.[35] Yet, petitioners filed a petition for certiorari and prohibition.

Nonetheless, beyond the conception of certiorari and prohibition under Rule 65 of the Rules of Court, the power of judicial review in Article VIII, Section 1 of the Constitution contemplates the correction, by way of petitions for certiorari and prohibition, of grave abuses of discretion by any governmental branch or instrumentality. This may lie even if no judicial, quasi-judicial, or ministerial function was exercised.[36]

Article VIII, Section 1 of the Constitution states:

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

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[34] *See Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452 (2010) [Per J. Carpio Morales, En Banc].

[35] *Such as* Presidential Decree No. 985 (1976), sec. 17 (g). It states:
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:
. . . .
(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.

[36] *SPARK v. Quezon City*, 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe, En Banc].

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In *Kilusang Mayo Uno v. Aquino*:[37]

This Court has discussed in several cases how the 1987 Constitution has expanded the scope of judicial power from its traditional understanding. As such, courts are not only expected to "settle actual controversies involving rights which are legally demandable and enforceable[,]" but are also empowered to determine if any government branch or instrumentality has acted beyond the scope of its powers, such that there is grave abuse of discretion.

This development of the courts' judicial power arose from the use and abuse of the political question doctrine during the martial law era under former President Ferdinand Marcos. In *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, this Court held:

> In *Francisco v. The House of Representatives*, we recognized that this expanded jurisdiction was meant "to ensure the potency of the power of judicial review to curb grave abuse of discretion by 'any branch or instrumentalities of government.'" Thus, the second paragraph of Article VIII, Section 1 engraves, for the first time in its history, into black letter law the "expanded *certiorari* jurisdiction" of this Court, whose nature and purpose had been provided in the sponsorship speech of its proponent, former Chief Justice Constitutional Commissioner Roberto Concepcion[:]
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> . . . . . .
>
> The first section starts with a sentence copied from former Constitutions. It says:
>
> The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> I suppose nobody can question it.
>
> The next provision is new in our constitutional law. I will read it first and explain.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not

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[37] G.R. No. 210500, April 2, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65208> [Per J. Leonen, En Banc].

there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

Fellow Members of this Commission, this is actually a product of our experience during martial law. As a matter of fact, it has some antecedents in the past, but the role of the judiciary during the deposed regime was marred considerably by the circumstance that in a number of cases against the government, which then had no legal defense at all, the solicitor general set up the defense of political question and got away with it. As a consequence, certain principles concerning particularly the writ of *habeas corpus*, that is, the authority of courts to order the release of political detainees, and other matters related to the operation and effect of martial law failed because the government set up the defense of political question. And the Supreme Court said: "Well, since it is political, we have no authority to pass upon it." The Committee on the Judiciary feels that this was not a proper solution of the questions involved. It did not merely request an encroachment upon the rights of the people, but it, in effect, encouraged further violations thereof during the martial law regime.

. . . .

Briefly stated, courts of justice determine the limits of power of the agencies and offices of the government as well as those of its officers. In other words, the judiciary is the final arbiter on the question whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction, or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction or lack of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.

This is the background of paragraph 2 of Section 1, which means that the courts cannot hereafter evade the duty to settle matters of this nature, by claiming that such matters constitute a political question. (Emphasis in the original, citations omitted)

Rule 65, Sections 1 and 2 of the Rules of Court provides remedies to address grave abuse of discretion by any government branch or instrumentality, particularly through petitions for certiorari and prohibition:

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. . . .

While these provisions pertain to a tribunal's, board's, or an officer's exercise of discretion in judicial, quasi-judicial, or ministerial functions, Rule 65 still applies to invoke the expanded scope of judicial power. In Araullo v. Aquino III, this Court differentiated certiorari from prohibition, and clarified that Rule 65 is the remedy to "set right, undo[,] and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial[,] or ministerial functions."

This Court further explained:

> The present Rules of Court uses two special civil actions for determining and correcting grave abuse of discretion amounting to lack or excess of jurisdiction. These are the special civil actions for certiorari and prohibition, and both are governed by Rule 65. . . .
>
> The ordinary nature and function of the writ of certiorari in our present system are aptly explained in Delos Santos v. Metropolitan Bank and Trust Company:
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> . . . .
>
> > The sole office of the writ of certiorari is the correction of errors of jurisdiction, which includes the commission of grave abuse of discretion amounting to lack of jurisdiction. In this regard, mere abuse of discretion is not enough to warrant the issuance of the writ. The abuse of discretion must be grave, which means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.

Although similar to prohibition in that it will lie for want or excess of jurisdiction, certiorari is to be distinguished from prohibition by the fact that it is a corrective remedy used for the re-examination of some action of an inferior tribunal, and

is directed to the cause or proceeding in the lower court and not to the court itself, while prohibition is a preventative remedy issuing to restrain future action, and is directed to the court itself. The Court expounded on the nature and function of the writ of prohibition in Holy Spirit Homeowners Association, Inc. v. Defensor:

> A petition for prohibition is also not the proper remedy to assail an IRR issued in the exercise of a quasi-legislative function. Prohibition is an extraordinary writ directed against any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, ordering said entity or person to desist from further proceedings when said proceedings are without or in excess of said entity's or person's jurisdiction, or are accompanied with grave abuse of discretion, and there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law. Prohibition lies against judicial or ministerial functions, but not against legislative or quasi-legislative functions. Generally, the purpose of a writ of prohibition is to keep a lower court within the limits of its jurisdiction in order to maintain the administration of justice in orderly channels. Prohibition is the proper remedy to afford relief against usurpation of jurisdiction or power by an inferior court, or when, in the exercise of jurisdiction in handling matters clearly within its cognizance the inferior court transgresses the bounds prescribed to it by the law, or where there is no adequate remedy available in the ordinary course of law by which such relief can be obtained. Where the principal relief sought is to invalidate an IRR, petitioners' remedy is an ordinary action for its nullification, an action which properly falls under the jurisdiction of the Regional Trial Court. In any case, petitioners' allegation that "respondents are performing or threatening to perform functions without or in excess of their jurisdiction" may appropriately be enjoined by the trial court through a writ of injunction or a temporary restraining order.

With respect to the Court, however, the remedies of certiorari and prohibition are necessarily broader in scope and reach, and the writ of certiorari or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal,

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> corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions. This application is expressly authorized by the text of the second paragraph of Section 1, . . .
>
> Thus, petitions for certiorari and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.[38] (Citations omitted)

Thus, if any governmental branch or instrumentality is shown to have gravely abused its discretion amounting to lack or excess of jurisdiction, and has overstepped the delimitations of its powers, courts may "set right, undo, or restrain" such act by way of certiorari and prohibition.

But even as this Court is vested with judicial power, it does not follow that we should resolve every question we may have the authority to answer. The Constitution grants the Judiciary the power to mediate the boundaries of the government's powers, but this mediation is circumscribed by the will of the people, in whom sovereignty resides,[39] as expressed by their representatives in the executive and legislative branches.[40] This Court's place in the constitutional order requires that we "decide on legal principle only in concrete controversies":

> This court is not the venue to continue the brooding and vociferous political debate that has already happened and has resulted in legislation. Constitutional issues normally arise when the right and obligations become doubtful as a result of the implementation of the statute. This forum does not exist to undermine the democratically deliberated results coming from the Congress and approved by the President. Again, there is no injury to a fundamental right arising

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[38] *Id*.

[39] CONST., art. II, sec. 1.

[40] *Angara v. Electoral Commission*,63 Phil. 139 (1936) [Per J. Laurel, En Banc].

from concrete facts established with proof. Rather, the pleadings raise grave moral and philosophical issues founded on facts that have not yet happened. They are the product of speculation by the petitioners.

To steeled advocates who have come to believe that their advocacy is the one true moral truth, their repeated view may seem to them as the only factual possibility. Rabid advocacy of any view will be intolerant of the nuanced reality that proceeds from conscious and deliberate examination of facts.

This kind of advocacy should not sway us.

Our competence is to decide on legal principle only in concrete controversies. We should jealously and rigorously protect the principle of justiciability of constitutional challenges. We should preserve our role within the current constitutional order. We undermine the legitimacy of this court when we participate in rulings in the abstract because there will always be the strong possibility that we will only tend to mirror our own personal predilections. We should thus adopt a deferential judicial temperament especially for social legislation.[41] (Citation omitted)

For this reason, the requisites of justiciability, long established in our jurisprudence, must be present in the cases this Court resolves:

As a rule, "the constitutionality of a statute will be passed on only if, and to the extent that, it is directly and necessarily involved in a justiciable controversy and is essential to the protection of the rights of the parties concerned." A controversy is said to be justiciable if: first, there is an actual case or controversy involving legal rights that are capable of judicial determination; second, the parties raising the issue must have standing or *locus standi* to raise the constitutional issue; third, the constitutionality must be raised at the earliest opportunity; and fourth, resolving the constitutionality must be essential to the disposition of the case.[42] (Citations omitted)

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[41] J. Leonen, Dissenting Opinion in *Imbong v. Ochoa*,732 Phil. 1, 559-560 (2014) [Per J. Mendoza, En Banc].

[42] *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, 872 SCRA 98 [Per J. Leonen, En Banc].

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I(A)

An actual case exists "when the act being challenged has had a direct adverse effect on the individual challenging it."[43] Thus, actual case means the presence of that concrete adverseness that can be drawn from the allegations raised by the parties in their pleadings:

> Jurisprudence provides that an actual case or controversy is one which "involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute." In other words, *"[t]here must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence."* Related to the requirement of an actual case or controversy is the requirement of "ripeness," meaning that the questions raised for constitutional scrutiny are already ripe for adjudication. "A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. It is a prerequisite that something had then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action." "*Withal, courts will decline to pass upon constitutional issues through advisory opinions, bereft as they are of authority to resolve hypothetical or moot questions*."[44] (Emphasis supplied, citations omitted)

Laws are general in nature. The courts' constitutional duty is "to settle actual controversies involving rights which are legally demandable and enforceable[.]"[45] Courts cannot and will not decide hypothetical issues, render advisory opinions, or engage academic questions.[46] The parties must present concrete facts

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[43] *LAMP v. Secretary of Budget and Management*,686 Phil. 357, 369 (2012) [Per J. Mendoza, En Banc] citing *Lozano v. Nograles*, 607 Phil. 334, 341 (2009) [Per C.J. Puno, En Banc] citing *Guingona, Jr. v. Court of Appeals*, 354 Phil. 415, 427-428 (1998) [Per J. Panganiban, First Division].

[44] *Belgica v. Executive Secretary*,721 Phil. 416, 519-520 (2013) [Per J. Perlas-Bernabe, En Banc].

[45] CONST., art. VIII, sec. 1.

[46] *Guingona, Jr. v. Court of Appeals*,354 Phil. 415, 426 (1998) [Per J. Panganiban, First Division].

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that demonstrate the problems vis-à-vis a legal provision.[47] The parties represented must show the contradicting considerations as a result of the alleged facts. Absent such actual case anchored on concrete adverseness, no factual basis exists for giving a petition due course.

In *Falcis v. Civil Registrar General*:[48]

> This Court's constitutional mandate does not include the duty to answer all of life's questions. No question, no matter how interesting or compelling, can be answered by this Court if it cannot be shown that there is an "actual and an antagonistic assertion of rights by one party against the other in a controversy wherein judicial intervention is unavoidable."
>
> This Court does not issue advisory opinions. We do not act to satisfy academic questions or dabble in thought experiments. We do not decide hypothetical, feigned, or abstract disputes, or those collusively arranged by parties without real adverse interests. If this Court were to do otherwise and jump headlong into ruling on every matter brought before us, we may close off avenues for opportune, future litigation. We may forestall proper adjudication for when there are actual, concrete, adversarial positions, rather than mere conjectural posturing:
>
> > Even the expanded jurisdiction of this Court under Article VIII, Section 1 does not provide license to provide advisory opinions. An advisory opinion is one where the factual setting is conjectural or hypothetical. In such cases, the conflict will not have sufficient concreteness or adversariness so as to constrain the discretion of this Court. After all, legal arguments from concretely lived facts are chosen narrowly by the parties. Those who bring theoretical cases will have no such limits. They can argue up to the level of absurdity. They will bind the future parties who may have more motives to choose specific legal arguments. In other words, for there to be a real conflict between the parties, there must exist actual facts from which

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[47] *See discussion on actual case or controversy in* J. Leonen, Dissenting Opinion in *Imbong v. Ochoa*,732 Phil. 1, 554-666 (2014) [Per J. Mendoza, En Banc].

[48] G.R. No. 217910, September 3, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65744>[Per J. Leonen, En Banc].

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courts can properly determine whether there has been a breach of constitutional text. ...

As this Court makes "final and binding construction[s] of law[,]" our opinions cannot be mere counsel for unreal conflicts conjured by enterprising minds. Judicial decisions, as part of the legal system, bind actual persons, places, and things. Rulings based on hypothetical situations weaken the immense power of judicial review.[49] (Citations omitted)

I(B)

Legal standing means "personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged."[50] That the party must present a personal stake in the case ensures the presence of concrete adverseness:

In public or constitutional litigations, the Court is often burdened with the determination of the *locus standi* of the petitioners due to the ever-present need to regulate the invocation of the intervention of the Court to correct any official action or policy in order to avoid obstructing the efficient functioning of public officials and offices involved in public service. It is required, therefore, that the petitioner must have a personal stake in the outcome of the controversy, for, as indicated in *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*:

> ***The question on legal standing is whether such parties have "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions."*** Accordingly, it has been held that the interest of a person assailing the constitutionality of a statute must be direct and personal. He must be able to show, not only that the law or any government act is invalid, but also that he sustained or is in imminent danger

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[49] Id.

[50] *Galicto v. Aquino III*,683 Phil. 141 (2012) [Per J. Brion, En Banc] citing *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452 (2010) [Per J. Carpio Morales, En Banc].

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> of sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way. It must appear that the person complaining has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the statute or act complained of.[51] (Emphasis supplied)

Here, respondent Secretary Soliman submits that petitioners Confederation for Unity, Recognition, and Advancement of Government Employees (COURAGE),National Federation of Employees Associations in the Department of Agriculture (NAFEDA),and Department of Agrarian Reform Employees Association (DAREA) should all be dropped as parties for having no legal standing.[52] She, however, concedes that petitioner SWEAP-DSWD has legal standing.[53]

Petitioners counter that COURAGE, NAFEDA, and DAREA "represent hundreds of government employees unions and associations, composing of hundreds of thousands of employees in the civil service, whose validly executed CNAs have been infringe[d] by the impugned budget circular."[54]

Nearly all of the petitioners here are organizations purporting to act on behalf of other organizations. Generally, representative parties such as organizations cannot be surrogates for the real party in interest suffering the actual injury. Should they desire to act as such, they must convincingly show that their representation through one voice would be more efficient than just some of the members suing and defending on behalf of all

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[51] *Araullo v. Aquino III*, 752 Phil. 716 (2014) [Per J. Bersamin, En Banc] citing *De Castro v. Judicial and Bar Council*, 629 Phil. 629 (2010) [Per J. Bersamin, En Banc]. *See also Galicto v. Aquino III*, 683 Phil. 141, 170 (2012) [Per J. Brion, Second Division] citing *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 472 (2010) [Per J. Carpio Morales, En Banc].

[52] *Rollo*,p. 256.

[53] Id.at 255.

[54] Id.at 344.

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the members.[55] In *National Federation of Hog Farmers, Inc. v. Board of Investments*:[56]

> For organizations to become real parties in interest, the following criteria must first be met so that actions may be allowed to be brought on behalf of third parties:
>
> > [F]irst, "the [party bringing suit] must have suffered an 'injury-in-fact,' thus giving him or her a 'sufficiently concrete interest' in the outcome of the issue in dispute"; second, "the party must have a close relation to the third party"; and third, "there must exist some hindrance to the third party's ability to protect his or her own interests."
>
> Organizations may possess standing to sue on behalf of their members if they sufficiently show that "the results of the case will affect their vital interests" and that their members have suffered or will stand to suffer from the application of the assailed governmental acts. The petition must likewise show that a hindrance exists, preventing the members from personally filing the complaint.
>
> In *White Light Corporation v. City of Manila*, hotel and motel operators protested the implementation of the City of Manila's Ordinance No. 7774, which prohibited short-time admission, or the admittance of guests for less than 12 hours in motels, inns, hotels, and similar establishments within the city. The petitioners argued, among others, that the Ordinance violated their clients' right to privacy, freedom of movement, and equal protection of the laws.
>
> In *White Light*, the petitioners were allowed to represent their clients based on third-party standing. This Court noted the close relationship between hotel and motel operators and their clients, as the former "rely on the patronage of their customers for their continued viability." On the requirement of hindrance, this Court stated that "[t]he relative silence in constitutional litigation of such special interest groups in our nation such as the American Civil Liberties Union in the United

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[55] *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, 872 SCRA 98 [Per J. Leonen, En Banc]; *Acosta v. Ochoa*, G.R. No. 211559, October 15, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/docmonth/Oct/2019/1> [Per J. Leonen, En Banc].

[56] G.R. No. 205835, June 23, 2020, [Per J. Leonen, En Banc].

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States may also be construed as a hindrance for customers to bring suit."[57] (Citations omitted)

The Petition does not allege whether petitioners COURAGE, NAFEDA, and DAREA have existing CNAs, nor does it allege the amount granted to them as CNA incentives. The Petition fails to show that these three petitioners "sustained or will sustain direct injury" from the issuance of Budget Circular No. 2011-5. Not all government employees are similarly situated. Some have existing CNAs, while others do not. Some government offices have year-end savings resulting from efficiency and lesser costs, but this may not be true for all. Decisions cannot cut across different contexts. Those who fail to raise an actual case should not be covered by a decision that considered the factual milieu alleged by those with legal standing.

Nonetheless, labor organizations occupy a unique position in that they have the constitutional and statutory right and duty to represent the workers within their membership.

Article XIII, Section 3 of the Constitution states:

SECTION 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

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[57] Id.

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The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth. (Emphasis supplied)

Article 242 of the Labor Code, as amended, provides that a labor organization has the right to represent its members in collective bargaining, and to undertake all activities to benefit the organization and its members:

ARTICLE 242. Rights of legitimate labor organizations. — A legitimate labor organization shall have the right:

a. To act as the representative of its members for the purpose of collective bargaining;

b. To be certified as the exclusive representative of all the employees in an appropriate bargaining unit for purposes of collective bargaining;

c. To be furnished by the employer, upon written request, with its annual audited financial statements, including the balance sheet and the profit and loss statement, within thirty (30) calendar days from the date of receipt of the request, after the union has been duly recognized by the employer or certified as the sole and exclusive bargaining representative of the employees in the bargaining unit, or within sixty (60) calendar days before the expiration of the existing collective bargaining agreement, or during the collective bargaining negotiation;

d. To own property, real or personal, for the use and benefit of the labor organization and its members;

e. To sue and be sued in its registered name; and

f. To undertake all other activities designed to benefit the organization and its members, including cooperative, housing, welfare and other projects not contrary to law.

Notwithstanding any provision of a general or special law to the contrary, the income and the properties of legitimate labor organizations, including grants, endowments, gifts, donations and contributions they may receive from fraternal and similar organizations, local or foreign, which are actually, directly and exclusively used for their lawful purposes, shall be free from taxes, duties and other

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assessments. The exemptions provided herein may be withdrawn only by a special law expressly repealing this provision. (Emphasis supplied)

Labor organizations also ensure that workers participate in decision-making processes that affect their rights, duties, and welfare. In *Samahan ng Manggagawa sa Hanjin Shipyard v. Bureau of Labor Relations*:[58]

As Article 246 (now 252) of the Labor Code provides, the right to self-organization includes the right to form, join or assist labor organizations for the purpose of collective bargaining through representatives of their own choosing and to engage in lawful concerted activities for the same purpose for their mutual aid and protection. This is in line with the policy of the State to foster the free and voluntary organization of a strong and united labor movement as well as to make sure that workers participate in policy and decision-making processes affecting their rights, duties and welfare.

The right to form a union or association or to self-organization comprehends two notions, to wit: (a) the liberty or freedom, that is, the absence of restraint which guarantees that the employee may act for himself without being prevented by law; and (b) the power, by virtue of which an employee may, as he pleases, join or refrain from joining an association.

In view of the revered right of every worker to self-organization, the law expressly allows and even encourages the formation of labor organizations. A labor organization is defined as "any union or association of employees which exists in whole or in part for the purpose of collective bargaining or of dealing with employers concerning terms and conditions of employment." A labor organization has two broad rights: (1) to bargain collectively and (2) to deal with the employer concerning terms and conditions of employment. To bargain collectively is a right given to a union once it registers itself with the DOLE. Dealing with the employer, on the other hand, is a generic description of interaction between employer and employees concerning grievances, wages, work hours and other terms and conditions of employment, even if the employees' group is not registered with the DOLE.

A union refers to any labor organization in the private sector organized for collective bargaining and for other legitimate purpose,

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[58] 771 Phil. 365 (2015) [Per J. Mendoza, Second Division].

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while a workers' association is an organization of workers formed for the mutual aid and protection of its members or for any legitimate purpose other than collective bargaining.

Many associations or groups of employees, or even combinations of only several persons, may qualify as a labor organization yet fall short of constituting a labor union. While every labor union is a labor organization, not every labor organization is a labor union. The difference is one of organization, composition and operation.

Collective bargaining is just one of the forms of employee participation. Despite so much interest in and the promotion of collective bargaining, it is incorrect to say that it is the device and no other, which secures industrial democracy. It is equally misleading to say that collective bargaining is the end-goal of employee representation. Rather, the real aim is employee participation in whatever form it may appear, bargaining or no bargaining, union or no union. Any labor organization which may or may not be a union may deal with the employer. This explains why a workers' association or organization does not always have to be a labor union and why employer-employee collective interactions are not always collective bargaining.[59] (Citations omitted)

As discussed above, though not to the same extent as private employees, the right to self-organize is likewise granted to government employees. Petitioner SWEAP-DSWD is one such organization. It may act to protect its members' interests in CNAs, which includes acting to contest issuances that may jeopardize these interests. It has the legal standing to bring their Petition to this Court.

I(C)

As for the third requisite: "A case is ripe for adjudication when the challenged governmental act is a completed action such that there is a direct, concrete, and adverse effect on the petitioner."[60]

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[59] Id. at 380-382.

[60] *Kilusang Mayo Uno v. Aquino*, G.R. No. 210500, April 2, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65208> [Per J. Leonen, En Banc].

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Closely linked with the requisite of an actual case, ripeness pertains to the challenged governmental act having reached the state where it is neither anticipatory nor too late, but rather, necessary for the Judiciary to intervene:

> Both these concepts relate to the timing of the presentation of a controversy before the Court — ripeness relates to its prematurity, while mootness relates to a belated or unnecessary judgment on the issues. The Court cannot preempt the actions of the parties, and neither should it (as a rule) render judgment after the issue has already been resolved by or through external developments.
>
> The importance of timing in the exercise of judicial review highlights and reinforces the need for an actual case or controversy — an act that may violate a party's right. Without any completed action or a concrete threat of injury to the petitioning party, the act is not yet ripe for adjudication. It is merely a hypothetical problem. The challenged act must have been accomplished or performed by either branch or instrumentality of government before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action.[61]

Ripeness must be viewed in light of the doctrine on exhaustion of administrative remedies. Before judicial intervention, the challenged act must fulfill the prerequisite that another governmental branch or instrumentality has already performed the act; the petitioner has immediately suffered or is threatened to suffer injury due to the act; and no more succor is found in another branch or instrumentality.[62] The doctrine "does not warrant a court to arrogate unto itself the authority to resolve, or interfere in, a controversy the jurisdiction over which is lodged initially with an administrative body";[63] rather, it is anchored on comity, respect, and convenience:

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[61] *AMCOW v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116, 146 (2016) [Per J. Brion, En Banc].

[62] *Kilusang Mayo Uno v. Aquino*, G.R. No. 210500, April 2, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65208> [Per J. Leonen, En Banc].

[63] *Garcia v. Court of Appeals*, 411 Phil. 25, 36 (2001) [Per J. Vitug, Third Division] citing *Paat v. Court of Appeals*, 334 Phil. 146 (1997) [Per J. Torres, Jr., Second Division].

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This Court has also said in a number of cases that —

When an adequate remedy may be had within the Executive Department of the government, but nevertheless, a litigant fails or refuses to avail himself of the same, the judiciary shall decline to interfere. This traditional attitude of the courts is based not only on convenience but likewise on respect: convenience of the party litigants and respect for a coequal office in the government. If a remedy is available within the administrative machinery, this should be resorted to before the resort can be made to (the) courts.[64]

Our Constitution should also be read by the executive branch. The doctrine demands deference to co-equal departments, allowing the appropriate authorities the opportunity "to act and correct the errors committed in the administrative forum."[65]

Petitioners here failed to exhaust all the administrative remedies before coming to this Court.

Aside from Budget Circular No. 2011-5, petitioners also question the constitutionality of the January 20, 2012 Memorandum signed by Assistant Secretary David-Casis.[66] The Memorandum does not show any signature of approval or conforme by respondent Secretary Soliman.[67]

Petitioners should have allowed the administrative process to run its course by first questioning the validity of the Memorandum, along with the Assistant Secretary's authority, before respondent Secretary Soliman. The Secretary's action may, in turn, be appealed to the Office of the President.[68]

True, the doctrine on exhaustion of administrative remedies does not apply when the assailed act was done in the exercise

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[64] Id. at 39 citing *Abe-abe vs. Manta*,179 Phil. 417 (1979) [Per J. Aquino, Second Division].

[65] Id. at 43.

[66] *Rollo*,p. 34.

[67] Id. at 63.

[68] *See* Administrative Order No. 22 (2011) entitled Prescribing Rules and Regulations Governing Appeals to the Office of the President of the Philippines.

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of quasi-legislative or rule-making functions.[69] Yet, the January 20, 2012 Memorandum, which directs the refund of excess CNA incentive, cannot be an exercise of quasi-legislative functions only when it created an imperative obligation upon the affected employees.

This Court has dismissed petitions, explaining that "liberality and the transcendental doctrine cannot trump blatant disregard of procedural rules," more so when "the petitioner had other available remedies[.]"[70]

The mere issuance of a regulation does not justify an immediate resort to this Court. Petitioner DSWD-SWEAP could have availed of administrative remedies before respondent Secretary Soliman, and then before the Office of the President.

I(D)

When the unconstitutionality of a governmental act is raised as a ground for judicial review, the constitutional issue must be properly presented, and its resolution must be necessary for a complete determination of the case.[71] In other words, the constitutional question must be the *lis mota* of the case; otherwise, the issues may be resolved and reliefs may be granted on some other ground.[72]

In *Parcon-Song v. Song*:[73]

The requirement that a constitutional issue seasonably raised should be the *lis mota* of the case is an aspect of judicial review that is

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[69] *Holy Spirit Homeowners Association, Inc. v. Secretary Defensor*, 529 Phil. 573, 585 (2006) [Per J. Tinga, En Banc] citing *Smart Communications, Inc. v. National Telecommunications Commission*, 456 Phil. 145, 157 (2003) [Per J. Ynares-Santiago, First Division].

[70] *Galicto v. Aquino III*, 683 Phil. 141, 169 (2012) [Per J. Brion, Second Division] citing *Concepcion v. Commission on Elections*, 609 Phil. 201 (2009) [Per J. Brion, En Banc].

[71] *See Laude v. Hon. Ginez-Jabalde*, 773 Phil. 490 (2015) [Per J. Leonen, En Banc].

[72] *See Griffith v. Court of Appeals*, 428 Phil. 878 (2002) [Per J. Quisumbing, Second Division].

[73] G.R. No. 199582, July 7, 2020 [Per J. Leonen, En Banc].

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rooted on two constitutional principles. First, the principle of deference. Second, the principle of reasonable caution in striking down an act by a co-equal political branch of government.

Article VIII, Section 1 of the Constitution which now specifies that this Court may now act on any grave abuse of discretion by any organ or department or branch of government, should never be interpreted as providing license for the Court to issue advisory opinions. Apart from an actual case or controversy, the Court must satisfy itself that the reliefs prayed for by the parties requires the resolution of a constitutional issue. The exceptions are (i) when a facial review of the statute is allowed as in cases of actual or clearly imminent violation of the sovereign rights to free expression and its cognate rights, or (ii) when there is a clear and convincing showing that a fundamental constitutional right has been actually violated in the application of a statute, which are of transcendental interest. That is, that the violation is so demonstrably and urgently egregious that it outweighs a reasonable policy of deference in such specific instance.

The facts constituting the demonstrable and egregious violation of a fundamental constitutional right must either be uncontested or established in a trial court for this court to take cognizance of the constitutional issue and rule upon it. The basis for ruling on the Constitutional issue must also be clearly alleged and traversed by the parties.

The relief of the party in this case can be granted simply by examining the statute applicable. It has not pleaded nor demonstrably shown a constitutional violation that is so urgently egregious that it should outweigh our reasonable policy of deference to the two other constitutional branches of government.[74]

I(E)

On the alleged violation of the rule on hierarchy of courts raised by respondents,[75] petitioners take exception by invoking transcendental importance of the constitutional questions involved.[76]

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[74] Id.

[75] *Rollo*, pp. 257-260 and 289.

[76] Id. at 344.

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The regional trial courts, the Court of Appeals, and this Court all have original jurisdiction to issue writs of certiorari and prohibition.[77] The doctrine on hierarchy of courts ensures that every level of the Judiciary can focus on effectively and efficiently performing its designated functions within the judicial system: Territorially organized trial courts weigh evidence and rule on factual issues; the Court of Appeals reviews these findings as a collegiate body; and this Court leads the Judiciary by resolving constitutional questions and promulgating doctrinal devices.[78]

Nevertheless, exceptions exist. This Court can exercise its discretionary power and assume jurisdiction over petitions filed directly before it when warranted. For one, a direct resort to this Court requires the existence of serious and important reasons:

> **The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition**. It cannot and should not be burdened with the task of dealing with causes in the first instance. **Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefor.** Hence, that jurisdiction should generally be exercised relative to actions or proceedings before the Court of Appeals, or before constitutional or other tribunals, bodies or agencies whose acts for some reason or another are not controllable by the Court of Appeals. **Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe**.[79] (Emphasis in the original)

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[77] Batas Pambansa Blg. 129 (1981), as amended, secs. 2 and 9; CONST., art. VIII, sec. 5 (1).

[78] *Diocese of Bacolod v. COMELEC*, 751 Phil. 301 (2014) [Per J. Leonen, En Banc].

[79] *Bañez, Jr. v. Concepcion*, 693 Phil. 399, 412 (2012) [Per J. Bersamin, First Division] citing *Vergara, Sr. v. Suelto*, 240 Phil. 719 (1987) [Per J. Narvasa, First Division].

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These important reasons include the following: "(1) when dictated by the public welfare and the advancement of public policy; (2) when demanded by the broader interest of justice; (3) when the challenged orders were patent nullities; or (4) when analogous exceptional and compelling circumstances called for and justified the immediate and direct handling of the case."[80]

This Court has allowed petitions raising genuine issues of constitutionality against actions done by other branches of government[81] and constitutional bodies.[82] It has also assumed jurisdiction over cases of first impression[83] and those of transcendental interest.[84]

Benefits awarded to government employees come from public funds. The challenged Budget Circular No. 2011-5 affects all government employees with valid CNAs, allowing the grant of CNA incentives.

Concededly, no facts are disputed in this case that would burden this Court with the task of exhaustively examining evidentiary matters, for which it is ill-equipped.[85] In the interest

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[80] *Dy v. Hon. Bibat-Palamos*, 717 Phil. 776, 783 (2013) [Per J. Mendoza, Third Division] citing *Republic of the Philippines v. Caguioa*, 704 Phil. 315 (2013) [Per J. Brion, Second Division].

[81] *See Review Center Association of the Philippines v. Executive Secretary*, 602 Phil. 342 (2009) [Per J. Carpio, En Banc].

[82] *See Arroyo v. DOJ, COMELEC*, 695 Phil. 302 (2012) [Per J. Peralta, En Banc]. *See also Diocese of Bacolod v. COMELEC*, 751 Phil. 301 (2014) [Per J. Leonen, En Banc].

[83] *See Government of the United States of America v. Purganan*, 438 Phil. 417 (2002) [Per J. Panganiban, En Banc].

[84] *See Kulayan v. Governor Tan*, 690 Phil. 72 (2012) [Per J. Sereno, En Banc]; *See also Chavez v. PEA-Amari*, 433 Phil. 506, 524 (2002) [Per J. Carpio, En Banc] citing *Chavez v. PCGG*,360 Phil. 133 (1998) [Per J. Panganiban, First Division]. *See also Gamboa v. Finance Secretary*, 668 Phil. 1 (2011) [Per J. Carpio, En Banc].

[85] *See Falcis v. Civil Registrar General*, G.R. No. 217910, September 3, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65744> [Per J. Leonen, En Banc].

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of judicial economy,[86] preventing further delay in the disposition of this case,[87] we consider the merits.

II

To put in context the substantive issues, a recall of the history of collective negotiations in the public sector is needed.

The Constitution and applicable laws, evolving through the years, provide the right of government employees to self-organize and engage in collective negotiation.

As early as 1953, Republic Act No. 875 or the Industrial Peace Act stated that employment terms and conditions of those in government service are governed by law:

> SECTION 11. *Prohibition Against Strikes in the Government.* — The terms and conditions of employment in the Government, including any political subdivision or instrumentality thereof, are governed by law and it is declared to be the policy of this Act that employees therein shall not strike for the purpose of securing changes or modification in their terms and conditions of employment. Such employees may belong to any labor organization which does not impose the obligation to strike or to join in strike: Provided, however, That this section shall apply only to employees employed in governmental functions and not to those employed in proprietary functions of the Government including but not limited to government corporations.

The 1983 case of *Alliance of Government Workers v. Minister of Labor and Employment*[88] raised whether the requirement under Presidential Decree No. 851 for employers "to pay all their employees receiving a basic salary of not more than ₱1,000.00 a month, a thirteenth (13th) month pay not later than December 24 of every year" included government employees.[89]

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[86] *See Salud v. The Court of Appeals*, 303 Phil. 397 (1994) [Per J. Puno, Second Division].

[87] *See People v. Hon. Dela Torre*, 698 Phil. 471 (2012) [Per J. Abad, En Banc].

[88] 209 Phil. 1 (1983) [Per J. Gutierrez, Jr., En Banc].

[89] Id. at 9.

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This Court dismissed the petition. It found that Section 3 of the Implementing Rules and Regulations, which excluded government employers from the coverage, was the correct interpretation of the decree. This Court then distinguished between private and public employees insofar as taking collective action as bargaining power in seeking concessions:

> The workers in the respondents institutions have not directly petitioned the heads of their respective offices nor their representatives in the Batasang Pambansa. They have acted through a labor federation and its affiliated unions. In other words, the workers and employees of these state firms, college, and university are taking collective action through a labor federation which uses the bargaining power of organized labor to secure increased compensation for its members.
>
> Under the present state of the law and pursuant to the express language of the Constitution, this resort to concerted activity with the ever present threat of a strike can no longer be allowed.
>
> The general rule in the past and up to the present is that "the terms and conditions of employment in the Government, including any political subdivision or instrumentality thereof are governed by law" (Section 11, the Industrial Peace Act, R.A. No. 875, as amended and Article 277, the Labor Code, P.D. No. 442, as amended). *Since the terms and conditions of government employment are fixed by law, government workers cannot use the same weapons employed by workers in the private sector to secure concessions from their employers*. The principle behind labor unionism in private industry is that industrial peace cannot be secured through compulsion by law. Relations between private employers and their employees rest on an essentially voluntary basis. Subject to the minimum requirements of wage laws and other labor and welfare legislation, the terms and conditions of employment in the unionized private sector are settled through the process of collective bargaining. In government employment, however, it is the legislature and, where properly given delegated power, the administrative heads of government which fix the terms and conditions of employment. And this is effected through statutes or administrative circulars, rules and regulations, not through collective agreements.[90] (Emphasis supplied)

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[90] Id. at 15.

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The 1973 Constitution included in its declaration of principles and state policies that "[t]he State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work."[91]

In 1974, Presidential Decree No. 442, or the Labor Code of the Philippines, was signed into law. It excluded "government employees, including employees of government-owned and/or controlled corporations" from the right to self-organization for purposes of collective bargaining.[92] Even the employment terms and conditions for government-owned and controlled corporations' employees are governed by the Civil Service Law, rules and regulations:

> ARTICLE 276. *Government employees.* — The terms and conditions of employment of all government employees, including employees of government-owned and controlled corporations, shall be governed by the Civil Service Law, rules and regulations. Their salaries shall be standardized by the National Assembly as provided for in the new constitution. However, there shall be no reduction of existing wages, benefits and other terms and conditions of employment being enjoyed by them at the time of the adoption of this Code.[93]

Further qualification for employees of government corporations was made in 1986 when former President Corazon C. Aquino (President Aquino) issued Executive Order No. 111. In amending the Labor Code, it granted employees "of government corporations established under the Corporation Code . . . the right to organize and to bargain collectively with their respective employers."[94]

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[91] 1973 CONST., art. II, sec. 9.

[92] *Arizala v. Court of Appeals*, 267 Phil. 615, 624 (1990) [Per J. Narvasa, First Division] citing LABOR CODE, art. 243; IMPLEMENTING RULES AND REGULATIONS, Book V, Rule 11, sec. 1.

[93] Presidential Decree No. 442 (1974), sec. 276.

[94] *Arizala v. Court of Appeals*, 267 Phil. 615, 624 (1990) [Per J. Narvasa, First Division] citing LABOR CODE, art. 244; IMPLEMENTING RULES AND REGULATIONS, book V, rule 11, sec. 1.

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The 1987 Constitution followed, stating that "[t]he right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged."[95] The State "shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law."[96] Article IX-B on the Civil Service Commission also states that "[t]he right to self-organization shall not be denied to government employees."[97]

Nonetheless, in the 1990 case of *Arizala v. Court of Appeals*,[98] this Court reiterated that the right of government employees to self-organize is not as extensive as in the private sector:

> However, the concept of the government employees' right of self-organization differs significantly from that of employees in the private sector. The latter's right of self-organization, i.e., "to form, join or assist labor organizations for purposes of collective bargaining," admittedly includes the right to deal and negotiate with their respective employers in order to fix the terms and conditions of employment and also, to engage in concerted activities for the attainment of their objectives, such as strikes, picketing, boycotts. But the right of government employees to "form, join or assist employees organizations of their own choosing" under Executive Order No. 180 is not regarded as existing or available for "purposes of collective bargaining," but simply "for the furtherance and protection of their interests."
>
> In other words, the right of Government employees to deal and negotiate with their respective employers is not quite as extensive as that of private employees. Excluded from negotiation by government employees are the "terms and conditions of employment . . . that are fixed by law," it being only those terms and conditions not otherwise fixed by law that "may be subject of negotiation between the duly recognized employees' organizations and appropriate government

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[95] CONST., art. III, sec. 8.

[96] CONST., art. XIII, sec. 3.

[97] CONST., art. IX-B, sec. 2 (5).

[98] 267 Phil. 615 (1990) [Per J. Narvasa, First Division].

authorities." And while EO No. 180 concedes to government employees, like their counterparts in the private sector, the right to engage in concerted activities, including the right to strike, the executive order is quick to add that those activities must be exercised in accordance with law, i.e., are subject both to "Civil Service Law and rules" and "any legislation that may be enacted by Congress," that "the resolution of complaints, grievances and cases involving government employees" is not ordinarily left to collective bargaining or other related concerted activities, but to "Civil Service Law and labor laws and procedures whenever applicable"; and that in case "any dispute remains unresolved after exhausting all available remedies under existing laws and procedures, the parties may jointly refer the dispute to the (Public Sector Labor-Management) Council for appropriate action." What is more, the Rules and Regulations implementing Executive Order No. 180 explicitly provide that since the "terms and conditions of employment in the government, including any political subdivision or instrumentality thereof and government-owned and controlled corporations with original charters are governed by law, the employees therein shall not strike for the purpose of securing changes thereof."

On the matter of limitations on membership in labor unions of government employees, Executive Order No. 180 declares that "high level employees whose functions are normally considered as policy making or managerial, or whose duties are of a highly confidential nature shall not be eligible to join the organization of rank-and-file government employees.["] A "high level employee" is one "whose functions are normally considered policy determining, managerial or one whose duties are highly confidential in nature. A managerial function refers to the exercise of powers such as: 1. To effectively recommend such managerial actions; 2. To formulate or execute management policies and decisions; or 3. To hire, transfer, suspend, lay off, recall, dismiss, assign or discipline employees."[99] (Citations omitted)

Exercising her legislative powers,[100] on June 1, 1987, then President Aquino issued Executive Order No. 180, entitled *Providing Guidelines for the Exercise of the Right to Organize*

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[99] Id. at 629-631.

[100] CONST., art. XVIII, sec. 6.

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of Government Employees, Creating a Public Sector Labor-Management Council and for Other Purposes.[101]

Executive Order No. 180 created a Public Sector Labor-Management Council (PSLMC), which was composed of officers who shall implement Executive Order No. 180:

> SECTION 15. A Public Sector Labor-Management Council, hereinafter referred to as the Council, is hereby constituted to be composed of the following:
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> | | | |
> |---|---|---|
> | 1) | Chairman, Civil Service Commission | Chairman |
> | 2) | Secretary, Department of Labor and Employment | Vice-Chairman |
> | 3) | Secretary, Department of Finance | Member |
> | 4) | Secretary, Department of Justice | Member |
> | 5) | Secretary, Department of Budget and Management | Member |
>
> The Council shall implement and administer the provisions of this Executive Order. For this purpose, ***the Council shall promulgate the necessary rules and regulations to implement this Executive Order***. (Emphasis supplied)

Subsequently, PSLMC issued the Implementing Rules and Regulations of Executive Order No. 180.[102]

On November 14, 2002, PSLMC issued 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*. It also issued Resolution No. 2, series of 2003, entitled *Grant of Collective Negotiation Agreement (CNA) Incentive for Government Owned or Controlled Corporations (GOCCs) and Government Financial Institutions (GFIs)*.[103]

PSLMC Resolution No. 4, which covers national government agencies, provides that "CNA Incentive can be paid every year

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[101] *Rollo*, pp. 140, 248, and 280.

[102] Available at <http://www.csc.gov.ph/2014-02-21-08-28-23/pdf-files/category/65-irr-of-e-o-180.html> (last accessed on November 10, 2020).

[103] Available at <http://www.csc.gov.ph/2014-02-21-08-28-23/pdf-files/category/107-pslmc-resolution-no-2,-s-2003-re-grant-of-cna-incentive-for-goccs-and-gfis> (last visited on November 10, 2020).

that savings are generated during the life of the CNA,"[104] and "[s]hould the grant of CNA Incentive be disallowed by the Commission on Audit, the management shall be held personally responsible for the payment thereof."[105] The Resolution defined "savings,"[106] and provided for its apportionment as follows:

> SECTION 5. Total Savings, as defined in Section 3 and net of the priorities in Section 4, generated after the signing of the CNA shall be apportioned, as follows:
>
> Fifty percent (50%) for CNA Incentive.
>
> Thirty percent (30%) for improvement of working conditions and other programs and/or to be added as part of the CNA Incentive, as may be agreed upon in the CNA.
>
> Twenty percent (20%) to be reverted to the General Fund for the national government agencies or to the General Fund of the constitutional commissions, state universities and colleges, and local government units concerned, as the case may be.

On August 31, 2004, former President Gloria Macapagal-Arroyo (President Arroyo) issued Administrative Order No. 103, entitled *Directing the Continued Adoption of Austerity Measures in the Government*.CNA incentive falls under the exceptions from the direction to suspend grants of new or additional benefits:

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[104] PSLMC Resolution No. 4 (2002), sec. 7.

[105] PSLMC Resolution No. 4 (2002), sec. 8.

[106] PSLMC Resolution No. 4 (2002), sec. 3 provides:

SECTION 3. Savings refer to such balances of the agency's released allotment for the year, free from any obligation or encumbrance and which are no longer intended for specific purpose/s:
(a) After completion of the work/activity for which the appropriation is authorized;
(b) Arising from unpaid compensation and related costs pertaining to vacant positions; or
(c) Realized from the implementation of the provisions of the CNA which resulted in improved systems and efficiencies thus enabled the agency to meet and deliver the required or planned targets, programs and services approved in the annual budget at a lesser cost.

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SECTION 3. All NGAs, SUCs, GOCCs, GFIs and OGCEs, whether exempt from Salary Standardization Law or not, are hereby directed to:

. . . .

(b) Suspend the grant of new or additional benefits to full-time officials and employees and officials, except for (i) Collective Negotiation Agreement (CNA) Incentives which are agreed to be given in strict compliance with the provisions of the Public Sector Labor-Management Council Resolutions No. 04, s. 2002 and No. 2, s. 2003, and (ii) those expressly provided by presidential issuance[.]

On September 28, 2004, PSLMC issued Resolution No. 2, series of 2004, entitled *Approving and Adopting the Amended Rules and Regulations Governing the Exercise of the Right of Government Employees to Organize*.[107] The amended rules and regulations lists CNA incentive under negotiable matters:

RULE XII
COLLECTIVE NEGOTIATIONS

SECTION 1. Subject of negotiation. — Terms and conditions of employment or improvements thereof, except those that are fixed by law, may be the subject of negotiation.

SECTION 2. Negotiable matters. — The following concerns may be the subject of negotiation between the management and the accredited employees' organization:

. . . .

(m) CNA incentive pursuant to PSLMC Resolution No. 4, s. 2002 and Resolution No. 2, s. 2003;[108] and,

(n) such other concerns which are not prohibited by law and CSC rules and regulations. (Emphasis supplied)

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[107] Available at <http://www.csc.gov.ph/2014-02-21-08-28-23/pdf-files/category/103-pslmc-resolution-no-2,-s-2004-re-approving-and-adopting-the-amended-rules-and-regulations.html> (last accessed on November 10, 2020).

[108] PSLMC Resolution No. 2 (2003), entitled *Grant of Collective Negotiation Agreement (CNA) Incentive for Government Owned or Controlled Corporations (GOCCs) and Government Financial Institutions (GFIs)*, May 19, 2003.

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. . . .

SECTION 5. Other matters. — Nothing herein shall be construed to prevent any of the parties from submitting proposals regarding other matters to Congress and the proper authorities to improve the terms and conditions of their employment.

On December 27, 2005, President Arroyo issued Administrative Order No. 135, authorizing the grant of CNA incentives to government employees and mandating the Department of Budget and Management to issue its implementing guidelines.[109] This reads:

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. Grant of Incentive. — The grant of the Collective Negotiation Agreement (CNA) incentive to national government agencies (NGAs), local government units (LGUs), state universities and colleges (SUCs),government-owned or controlled corporations (GOCCs), and government financial institutions (GFIs), if provided in their respective CNAs and supplements thereto executed between the management and employees' organizations accredited by the Civil Service Commission, is hereby authorized.

Furthermore, the grant of the CNA incentive pursuant to CNAs entered into on or after the effectivity of PSLMC Resolution No. 4, series of 2002, and PSLMC Resolution No. 2, series of 2003, and in strict compliance therewith, is confirmed.

SECTION 2. Limitation. — The CNA incentive shall be granted only to rank-and-file employees. The existing CNA incentive shall be rationalized to simplify its administration and to preclude duplication with incentives granted through the Program on Awards and Incentives for Service Excellence (PRAISE).

SECTION 3. Cost-Cutting Measures and Systems Improvement. — The management and the accredited employees' organization shall identify in the CNA the cost-cutting measures and systems improvement to be jointly undertaken by them so as to achieve effective service delivery and agency targets at lesser costs.

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[109] *Rollo*, p. 7.

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SECTION 4. Savings as Source. — The CNA Incentive shall be sourced only from the savings generated during the life of the CNA.

SECTION 5. Release of Incentive. — The CNA Incentive may be paid every year that savings are generated during the life of the CNA.

SECTION 6. Implementation. — The Department of Budget and Management shall issue the policy and procedural guidelines to implement this Administrative Order.

SECTION 7. Effectivity. — This Administrative Order shall take effect immediately.

DONE in the City of Manila, this 27th day of December in the year of Our Lord, Two Thousand Five.

Following this, on February 1, 2006, the Department of Budget and Management issued Budget Circular No. 2006-1, which provided the policy and procedural guidelines in the grant and funding of CNA incentive. Under these guidelines, the incentive shall be paid as a one-time benefit after the end of the year; it shall be sourced solely from savings from released Maintenance and Other Operating Expenses allotments, subject to conditions; and the amount of CNA incentive shall not be pre-determined in the CNA.[110]

Arizala discussed Executive Order No. 180 on the scope of government employees' constitutional right to self-organization:

> However, the concept of the government employees' right to self-organization differs significantly from that of employees in the private sector. The latter's right of self-organization, i.e.,"to form, join or assist labor organizations *for purposes of collective bargaining*," admittedly includes the right to deal and negotiate with their respective employers in order to fix the terms and conditions of employment and also, to engage in concerted activities for the attainment of their objectives, such as strikes, picketing, boycotts. But the right of government employees to "form, join or assist employees organizations of their own choosing" under Executive Order No. 180 is not regarded as existing or available for "purposes of collective bargaining," but simply "for the furtherance and protection of their interests."

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[110] *Rollo*, pp. 109-111 and 142.

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In other words, the right of Government employees to deal and negotiate with their respective employers is not quite as extensive as that of private employees. ***Excluded from negotiation by government employees are the "terms and conditions of employment ...that are fixed by law,"*** it being only those terms and conditions not otherwise fixed by law that "may be subject of negotiation between the duly recognized employees' organizations and appropriate government authorities."[111] (Emphasis supplied)

Laws fixing employment terms and conditions include Republic Act No. 6758, or the Salary Standardization Law.

In *Social Security System v. Commission on Audit*,[112] this Court affirmed the Commission on Audit decision disallowing the payment of ₱5,000.00 as signing bonus to Social Security System employees pursuant to their CNA.

This Court cited Executive Order No. 180, Republic Act No. 6758, and *Philippine Ports Authority v. Commission on Audit*[113] for its ruling that "no financial or non-financial incentive could be awarded to employees of government owned and controlled corporations aside from benefits which were being received by incumbent officials and employees as of 1 July 1989."[114] This Court discussed:

On the basis of the foregoing pronouncement, we do not find the signing bonus to be a truly reasonable compensation. The gratuity was of course the SSC's gesture of good will and benevolence for the conclusion of collective negotiations between SSC and ACCESS, as the CNA would itself state, but for what objective? Agitation and propaganda which are so commonly practiced in private sector labor-management relations have no place in the bureaucracy and that only a peaceful collective negotiation which is concluded within a reasonable

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[111] *Arizala v. Court of Appeals*, 267 Phil. 615, 629 (1990) [Per J. Narvasa, First Division].

[112] 433 Phil. 946 (2002) [Per J. Bellosillo, En Banc].

[113] 289 Phil. 266 (1992) [Per J. Gutierrez, Jr., En Banc].

[114] *Social Security System v. Commission on Audit*, 433 Phil. 946, 959 (2002) [Per J. Bellosillo, En Banc].

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time must be the standard for interaction in the public sector. This desired conduct among civil servants should not come, we must stress, with a price tag which is what the signing bonus appears to be.[115]

In 2012, this Court decided *Manila International Airport Authority v. Commission on Audit*,[116] which also involved the grant of CNA "contract signing bonus" worth ₱30,000.00.

The grant was found to be in the nature of a signing bonus, and thus, an illegal disbursement. This Court noted that "even assuming that the subject benefit is a CNA Incentive, [Manila International Airport Authority]'s non-compliance with the requirements under PSLMC Resolution No. 2 and DBM Budget Circular No. 2006-1 rendered the same illegal[.]"[117] This Court then discussed that Budget Circular No. 2006-1 is consistent with and germane to the purpose of PSLMC Resolution No. 2 and Administrative Order No. 135:

> Interestingly, MIAA claimed that the subject benefit is a CNA Incentive but refused to comply with DBM Budget Circular No. 2006-1, raising the unconstitutionality thereof as the reason for its non-submission of its COB for the DBM's approval and the release of the benefit prior to the end of 2003. Allegedly, there is a conflict between DBM Budget Circular No. 2006-1 and A.O. No. 135 as there is nothing in the latter, which requires the COB to be submitted for DBM's validation and the payment of the CNA Incentive at the end of the year.
>
> However, the said conflict is more imagined than real. A cursory reading of DBM Budget Circular No. 2006-1 shows that its provisions are consistent with those of PSLMC Resolution No. 2 and A.O. No. 135. There is no clear showing that the former secretary of DBM transcended the demarcations fixed by A.O. No. 135 in the exercise of her rule-making power.
>
> Particularly, the requirement that the COB should be submitted to the President through the DBM for approval is already a pre-existing requirement under Section 4, PSLMC Resolution No. 2. Such

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[115] Id. at 963.

[116] 681 Phil. 644 (2012) [Per J. Reyes, En Banc].

[117] Id. at 663.

requirement is likewise consistent with Section 5, Presidential Decree No. 1597 and Memorandum Order No. 20 dated June 25, 2001 mentioned in the 5th and 6th Whereas Clauses of A.O. No. 135. With respect to the requirement that the CNA Incentive be released after the end of the year, this does not contravene any provision of A.O. No. 135 and PSLMC Resolution No. 2. By specifying the time when the CNA Incentive may be released to the rank-and-file employees, the former DBM Secretary was merely supplying a detail necessary for the proper implementation of A.O. No. 135. *The assailed provisions of DBM Budget Circular No. 2006-1 are germane to the purposes and objectives of A.O. No. 135 and PSLMC Resolution No. 2 and not much is required to appreciate its rationale: to ensure that the CNA Incentive will be paid only if the actual operating income meets or exceeds the target fixed in COB and will be funded by the savings generated from cost-reducing measures and no other*. Without further extrapolation, these amounts remain to be mere approximations until the end of the year.[118] (Emphasis supplied, citation omitted)

The following guidelines on the basic concept of CNA negotiations take into account the relevant provisions of the Constitution, statutes, their implementing rules and regulations, as well as jurisprudence on the matter:

a) The right to collective negotiation in the public sector is a constitutionally protected right subject to the conditions stated in the Constitution and as may be provided supplementarily by law;

b) All CNAs negotiated must be consistent with law and implementing regulations;

c) The flexibilities of government agencies are limited by law. Wage benefits are subject to the Salary Standardization Law. Non-wage benefits are subject to regulations issued by the Civil Service Commission;

d) The grant of wage benefits is also subject to the constitutional and statutory authorizations for the use of appropriations and savings;

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[118] Id. at 665-666.

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e) Unlike in the private sector, negotiations in the public sector must always consider the public interest and take the governmental role of the agency or office into primordial concern;

f) All employees are public officers and are thus subject to public trust and statutory limitations on matters including their conduct;

g) Incumbent heads of offices are temporary; and

h) Members of Congress, representing their constituents, including union members, can change the law.

III

Here, petitioners assail Budget Circular No. 2011-5 for constituting legislation.[119] They say that respondent Secretary Abad has no power to "issue guidelines, to disallow [or] set limit or conditions in the grant of [CNA incentives]."[120]

Petitioners submit that Sections 3.2,[121] 3.3,[122] and 3.4[123] of the Circular are unconstitutional for limiting the sources of the

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[119] *Rollo*, p. 334.

[120] Id. at 336 and 345-347.

[121] Budget Circular No. 2011-5 (2011), sec. 3.2 states:
3.2 The CNA Incentive shall be sourced solely from agency savings from released Maintenance and Other Operating Expenses (MOOE) allotments for the year under review, limited to the MOOE items in 3.3 hereof, still valid for obligation during the same year, subject to the following conditions:
3.2.1 The savings were generated out of the improvement/streamlining of systems and procedures and cost-cutting measures identified in the CNA;
3.2.2 The savings shall be net of the priorities in the use thereof such as, augmentation of the amounts set aside for compensation, year-end bonus and cash gift, retirement gratuity, terminal leave benefits, old-age pension of veterans, and other personnel benefits authorized by law, and those expenditure items authorized in agency special provisions and in other sections of the General Provisions of the FY 2011 GAA; and
3.2.3 The specific expenditure item to be used as source of the CNA Incentive should not be augmented from other items under Personal Services, MOOE, or Capital Outlay.
See copy of the Circular Letter on <https://www.dbm.gov.ph/wp-content/uploads/Issuances/2011/Circular%20Letter/CL2011-9/cl2011-9.pdf> (last accessed on November 10, 2020).

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CNA incentive. This, they contend, makes the Circular contrary to and effectively amending Section 4 of Administrative Order No. 135, which neither limits the source of the savings nor fixes a maximum amount of CNA incentive.[124]

Respondent Secretary Abad counters that the Circular is valid and consistent with laws and jurisprudence.[125]

He cites provisions of Presidential Decree No. 985, the Administrative Code, and Republic Act No. 6758 in support of the argument that the Department of Budget and Management "has the sole power and discretion to administer the Compensation and Position Classification System of the National Government, which includes the rules on the grant of CNA incentive."[126] Administrative Order No. 135 also specifically

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[122] Budget Circular No. 2011-5 (2011), sec. 3.3 states:
3.3 Savings from only the following MOOE items may be used as fund source of the CNA Incentive, subject to the provisions of item 3.4 hereof:
3.3.1 Traveling Expenses
3.3.2 Communication Expenses
3.3.3 Repair and Maintenance
3.3.4 Transportation and Delivery Expenses
3.3.5 Supplies and Materials
3.3.6 Utility Expenses
See copy of the Circular Letter on <https://www.dbm.gov.ph/wp-content/uploads/Issuances/2011/Circular%20Letter/CL2011-9/cl2011-9.pdf> (last accessed on November 10, 2020).

[123] Budget Circular No. 2011-5 (2011), sec. 3.4 states:
Savings generated from the following circumstances are not allowed to be used as fund source of the CNA Incentive:
3.4.1 Portions or balances of allotments for discounted or deferred P/A/Ps;
3.4.2 Savings from released allotments intended for the acquisition of goods and services that will be distributed/delivered to, or to be used by the agency's clients; and
3.4.3 Savings from released allotments from Special Purpose Funds such as, E-Government Fund, International Commitments Fund, etc.
See copy of the Circular Letter on <https://www.dbm.gov.ph/wp-content/uploads/Issuances/2011/Circular%20Letter/CL2011-9/cl2011-9.pdf> (last accessed on November 10, 2020).

[124] *Rollo*, p. 338.

[125] Id. at 286.

[126] Id. at 290-291.

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authorizes the Department to issue the policy and procedural guidelines on the grant of CNA incentives.[127]

Respondent Secretary Abad adds that the Circular is consistent with the policy and principles of Administrative Order No. 135, quoting this Court's ruling in *Manila International Airport Authority*.[128] The ₱25,000.00 cap, he says, "ensure[s] that the planned targets, programs and projects are not hampered by the observed perverse tendency of agencies of scrimping on vital expenditures or bloating their budgets just so as to accumulate savings for payment of the CNA incentive."[129]

For her part, respondent Secretary Soliman argues that the circular's issuance is a lawful exercise of executive and administrative power.[130] She quotes *Blaquera v. Alcala*,[131] which differentiated private from government employees in that the latter's employment terms and conditions are "effected through statutes or administrative circulars, rules and regulations, not through collective bargaining agreements."[132] She adds that the Budget Secretary, as the President's alter ego, has rule-making powers to issue policies and procedural guidelines to implement Administrative Order No. 135.[133]

To rule on this issue, we consider the relevant laws and regulations on government employees' right to organize and negotiate, specifically for CNA incentives.

Executive Order No. 180 created the PSLMC as the body to implement and administer government employees' right to organize. Section 15 provides for its creation, stating that the

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[127] *Id*. at 291.

[128] 681 Phil. 644 (2012) [Per J. Reyes, En Banc]. See *rollo*, p. 292.

[129] *Rollo*, p. 293.

[130] Id. at 261.

[131] 356 Phil. 678 (1998) [Per J. Purisima, En Banc].

[132] *Rollo*, p. 263.

[133] Id. at 264-265.

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PSLMC "shall promulgate the necessary rules and regulations to implement this Executive Order."[134]

Former President Aquino issued Executive Order No. 180 on June 1, 1987, after the 1987 Constitution had been ratified but before the first Congress convened. Thus, this order is in the nature of a statute.

The Department of Budget and Management recognizes that Administrative Order No. 135, issued in 2005, merely "confirmed the grant of the CNA Incentive in strict compliance with the said PSLMC Resolutions[.]"[135]

Pursuant to Section 15 of Executive Order No. 180, PSLMC issued several resolutions including PSLMC Resolution No. 4, series of 2002.

PSLMC Resolution No. 4 recognized this Court's ruling in *Social Security System*, which prohibited the grant of signing bonus by stating that, "during the negotiation, the parties may agree on some other kinds and forms of incentive to those who have contributed either in productivity or cost savings which are referred herein as CNA Incentive."[136]

PSLMC Resolution No. 4 clearly limited the sources of the CNA incentive such that "only savings generated after the signing of the CNA may be used" for it.[137] The Resolution defined "savings" as "such balances of the agency's released allotment for the year, free from any obligation or encumbrance and which are no longer intended for specific purpose/s[.]"[138] It even provided for its apportionment as follows:

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[134] Executive Order No. 180 (1987), sec. 15.

[135] Budget Circular No. 2006-1 (2006), sec. 1, available at <https://www.dbm.gov.ph/wp-content/uploads/2012/03/BC-2006-1.pdf> (last visited on November 10, 2020).

[136] PSLMC Resolution No. 4 (2002), whereas clauses.

[137] PSLMC Resolution No. 4 (2002), sec. 1.

[138] PSLMC Resolution No. 4 (2002), sec. 3.

Section 3. Savings refer to such balances of the agency's released allotment for the year, free from any obligation or encumbrance and which are no longer intended for specific purpose/s:

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Section 5. Total Savings, as defined in Section 3 and net of the priorities in Section 4, generated after the signing of the CNA shall be apportioned, as follows:

Fifty percent (50%) for CNA Incentive.

Thirty percent (30%) for improvement of working conditions and other programs and/or to be added as part of the CNA Incentive, as may be agreed upon in the CNA.

Twenty percent (20%) to be reverted to the General Fund for the national government agencies or to the General Fund of the constitutional commissions, state universities and colleges, and local government units concerned, as the case may be.[139]

PSLMC Resolution No. 4 also provides that CNA incentives "can be paid every year that savings are generated during the life of the CNA."[140] If the grant of CNA Incentive is disallowed, "the management shall be held personally responsible for the payment thereof."[141]

Thus, Section 3.2 of Budget Circular No. 2011-5—which limits the sources of CNA incentives "solely from agency savings from released Maintenance and Other Operating Expenses (MOOE) allotments for the year under review, limited to the MOOE Items in 3.3 hereof, still valid for obligation during the same year, subject to the following conditions"[142] —is consistent with PSLMC Resolution No. 4.

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a. After completion of the work/activity for which the appropriation is authorized;
b. Arising from unpaid compensation and related costs pertaining to vacant positions; or
c. Realized from the implementation of the provisions of the CNA which resulted in improved systems and efficiencies thus enabled the agency to meet and deliver the required or planned targets, programs and services approved in the annual budget at a lesser cost.

[139] PSLMC Resolution No. 4 (2002), sec. 5.

[140] PSLMC Resolution No. 4 (2002), sec. 7.

[141] PSLMC Resolution No. 4 (2002), sec. 8.

[142] Budget Circular No. 2011-5 (2011), sec. 3.2.

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Incidentally, Budget Circular No. 2006-1 is also consistent with PSLMC Resolution No. 4. It limited the sources of CNA incentives such that the amount "[s]hall not be pre-determined in the CNAs or in the supplements thereto since it is dependent on savings generated from cost-cutting measures and systems improvement, and also from improvement of productivity and income in [government-owned and controlled corporations] and [government financial institutions.]"[143] It also provided that CNA incentives "[m]ay vary every year during the term of the CNA, at rates depending on the savings generated after the signing and ratification of the CNA[.]"[144] It even included the apportionments of savings in Section 5 of PSLMC Resolution No. 4.[145]

Notably, the ₱25,000.00 ceiling amount under Section 3.5 of Budget Circular No. 2011-5 cannot be found in PSLMC Resolution No. 4. On this score, respondent Secretary Abad cites three laws as basis for the ceiling amount. Section 17 of Presidential Decree No. 985[146] states:

> 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; (as amended by Republic Act No. 6758)
>
> . . . .
>
> 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

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[143] Budget Circular No. 2006-1 (2006), sec. 5.6.1.

[144] Budget Circular No. 2006-1 (2006), sec. 5.6.3.

[145] Budget Circular No. 2006-1 (2006), sec. 6.1.3.

[146] Presidential Decree No. 985 (1976) entitled *A Decree Revising the Position Classification and Compensation Systems in the National Government, and Integrating the Same.*

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all types of allowances and additional forms of compensation to employees in all agencies of the government;

Meanwhile, Book IV, Title XVII, Chapter 1, Section 3 of the Administrative Code of 1987 provides the Department of Budget and Management's powers and functions:

SECTION 3. Powers and Functions. — The Department of Budget and Management shall assist the President in the preparation of a national resources and expenditures budget, preparation, execution and control of the National Budget, preparation and maintenance of accounting systems essential to the budgetary process, achievement of more economy and efficiency in the management of government operations, administration of compensation and position classification systems, assessment of organizational effectiveness and review and evaluation of legislative proposals having budgetary or organizational implications.

Section 6 of Administrative Order No. 135, for its part, authorizes the grant of CNA incentives:

SECTION 6. Implementation. — The Department of Budget and Management shall issue the policy and procedural guidelines to implement this Administrative Order.

Following the mandate of Administrative Order No. 135,[147] the Department of Budget and Management issued Budget Circular No. 2006-1, Circular Letter No. 2011-9, and the assailed Budget Circular No. 2011-5.

Respondent Secretary Abad adds that a CNA incentive ceiling is consistent with Administrative Order No. 135 by guarding against tendencies to manipulate the budget to accumulate savings:

Indeed, a delegated authority to issue guidelines must not go beyond the limits of the authority given. In all the issuances i.e., the pertinent PSLMC issuances and AO No. 135, the driving force in the grant of the CNA Incentive is the 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. Consistent

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[147] Administrative Order No. 135 (2005), sec. 6.

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therewith, the provisions of Budget Circular No. 2011-5 were crafted along this policy consideration, thus, the need to put a cap on the grant of CNA Incentive, as with other forms of compensation and benefits.

To elucidate, the necessary and logical consequence of implementing this policy of efficiency is to provide limitations such as the identification of specific MOOE items and the ₱25,000 cap per entitled employee. Moreover, the funding source for the CNA Incentive is the savings generated from cost-efficiency measures adopted by the labor and management. Unlike basic salary which is provided in the national budget, the payment of CNA Incentive is dependent on the amount of allowable agency savings. *If there are no limits, both as to the savings that may be utilized as well as to the amount of incentive to be granted, public funds originally intended for programs and projects which for one reason or the other was not implemented, would be fully spent as payment of incentive without said funds being the byproduct of efficiency in agency operations, the very heart and soul in the grant of CNA Incentive*. Hence, the need for DBM to be circumspect and reflect these policy considerations through the guidelines.

. . . .

On the other hand, *the provision of the ₱25,000 cap per employee is to ensure that the planned targets, programs and projects are not hampered by the observed perverse tendency of agencies of scrimping on vital expenditures or bloating their budgets just so as to accumulate savings for payment of the CNA Incentive*. These factors — scrimping on vital expenditures or bloating of budgets — if present run counter to the policy behind the grant of CNA Incentive *i.e.*, recognizing the efforts of efficient use of government resources by labor and management of the different government agencies.[148] (Emphasis supplied)

This Court agrees. The ₱25,000.00 CNA incentive ceiling in Budget Circular No. 2011-5 is in consonance with law and existing rules.

Indeed, Executive Order No. 180 vested PSLMC with the power to promulgate rules to implement it. This, however, did

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[148] *Rollo*, pp. 292-293.

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not deprive the Department of Budget and Management of its power to issue rules on compensation as a result of collective negotiations between government employees' organizations and their employers.

As the governmental body that administers the national government's compensation and position classification system,[149] the Department of Budget and Management controls the payment of compensation to all appointive and elective positions in government, including government-owned or controlled corporations and government financial institutions.[150] In *Commission on Human Rights Employees Association v. Commission on Human Rights*:[151]

> This power to "administer" is not purely ministerial in character as erroneously held by the Court of Appeals. The word to administer means to control or regulate in behalf of others; to direct or superintend the execution, application or conduct of; and to manage or conduct public affairs, as to administer the government of the state.
>
> The regulatory power of the DBM on matters of compensation is encrypted not only in law, but in jurisprudence as well. In the recent case of *Philippine Retirement Authority (PRA) v. Jesusito L. Buñag*, this Court, speaking through Mr. Justice Reynato Puno, ruled that compensation, allowances, and other benefits received by PRA officials and employees without the requisite approval or authority of the DBM are unauthorized and irregular. In the words of the Court —

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[149] Republic Act No. 6758 (1989), sec. 2 states:

SECTION 2. Statement of Policy. — It is hereby declared the policy of the State 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 the private sector for comparable work. For this purpose, the Department of Budget and Management (DBM) is hereby directed to establish and administer a unified Compensation and Position Classification System, hereinafter referred to as the System, as provided for in Presidential Decree No. 985, as amended, that shall be applied for all government entities, as mandated by the Constitution.

[150] Republic Act No. 6758 (1989), sec. 4.

[151] 486 Phil. 509 (2004) [Per J. Chico-Nazario, Second Division].

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> Despite the power granted to the Board of Directors of PRA to establish and fix a compensation and benefits scheme for its employees, the same is subject to the review of the Department of Budget and Management. However, in view of the express powers granted to PRA under its charter, the extent of the review authority of the Department of Budget and Management is limited. As stated in Intia, the task of the Department of Budget and Management is simply to review the compensation and benefits plan of the government agency or entity concerned and determine if the same complies with the prescribed policies and guidelines issued in this regard. The role of the Department of Budget and Management is supervisorial in nature, its main duty being to ascertain that the proposed compensation, benefits and other incentives to be given to PRA officials and employees adhere to the policies and guidelines issued in accordance with applicable laws.

In *Victorina Cruz v. Court of Appeals*, we held that the DBM has the sole power and discretion to administer the compensation and position classification system of the national government.

In *Intia, Jr. v. Commission on Audit*, the Court held that although the charter of the Philippine Postal Corporation (PPC) grants it the power to fix the compensation and benefits of its employees and exempts PPC from the coverage of the rules and regulations of the Compensation and Position Classification Office, by virtue of Section 6 of P.D. No. 1597, the compensation system established by the PPC is, nonetheless, subject to the review of the DBM. This Court intoned:

> It should be emphasized that the review by the DBM of any PPC resolution affecting the compensation structure of its personnel should not be interpreted to mean that the DBM can dictate upon the PPC Board of Directors and deprive the latter of its discretion on the matter. Rather, the DBM's function is merely to ensure that the action taken by the Board of Directors complies with the requirements of the law, specifically, that PPC's compensation system "conforms as closely as possible with that provided for under R.A. No. 6758."[152] (Citations omitted)

Administrative Order No. 135 authorizes the grant of CNA incentives to "national government agencies (NGAs), local

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[152] Id. at 527-529.

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government units (LGUs), state universities and colleges (SUCs), government-owned or controlled corporations (GOCCs), and government financial institutions (GFIs), if provided in their respective CNAs and supplements thereto executed between the management and employees' organization accredited by the Civil Service Commission[.]"[153] Its Section 6 grants the power to issue the policy and procedural guidelines to the Department of Budget and Management:

> SECTION 6. Implementation. — The Department of Budget and Management shall issue the policy and procedural guidelines to implement this Administrative Order.

In this regard, as pointed out by Associate Justice Estela Perlas-Bernabe in her Separate Concurring Opinion, government appropriations acts have over the years included provisions that limited approved CNA incentives to reasonable rates as determined by the Department of Budget and Management.[154]

Republic Act No. 10155, or the General Appropriations Act of 2012, states:

> SECTION 56. Rules in the Realignment of Funds. — Realignment of funds from one allotment class to another shall require prior approval of the DBM.
>
> Departments, agencies and offices are authorized to augment any item of expenditure within Personal Services and MOOE except confidential and intelligence funds which require prior approval of the President of the Philippines. However, realignment of funds among objects of expenditures within Capital Outlays shall require prior approval of the DBM.
>
> Notwithstanding the foregoing, realignment of any savings for the payment of magna carta benefits authorized under Section 41 hereof shall require prior approval of the DBM. 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

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[153] Administrative Order No. 135 (2005), sec. 1.

[154] J. Perlas-Bernabe, Separate Opinion.

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1, 2006 shall be limited to such reasonable rates as may be determined by the DBM.

Republic Act No. 10352, or the General Appropriations Act of 2013, states:

SECTION 55. Rules in the Realignment of Savings for the Payment of Collective Negotiation Agreement Incentives. — Savings from allowable MOOE allotments generated out of cost-cutting measures identified in the Collective Negotiation Agreements (CNAs) and supplements thereto may be used for the grant of CNA incentive by agencies with duly executed CNAs: PROVIDED, That the one-time annual payment of CNA incentives must be made through a written resolution signed by representatives of both labor and management, and approved by the agency head: PROVIDED, FURTHER, That the funding sources and 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.

Republic Act No. 10633, or the General Appropriations Act for 2014, states:

SECTION 71. Rules in the Realignment of Savings for the Payment of Collective Negotiation Agreement Incentives. — Savings from allowable MOOE allotments, generated out of cost-cutting measures undertaken by the agencies of the government and their respective personnel, which are identified in their respective Collective Negotiation Agreements (CNAs) and supplements thereto may be used for the grant of CNA Incentives by agencies with duly executed CNAs: PROVIDED, That the one-time annual payment of CNA Incentive shall be made through a written resolution signed by agency representatives from both labor and management, and approved by the agency head: PROVIDED, FURTHER, 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.

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Implementation of this provision shall be subject to guidelines issued by the DBM.

Clearly, in imposing a ₱25,000.00 budget ceiling for CNA incentives, the Department of Budget and Management acted within its authority granted by law and existing rules.

IV

The issues raised by the parties opened questions on the validity of Section 15 of Executive Order No. 180, which created the PSLMC, and the effect of this issue on PSLMC's acts and issuances, such as PSLMC Resolution No. 4, series of 2002.

In their Supplemental Memorandum, respondents discussed that Executive Order No. 180 was issued when then President Aquino could lawfully exercise legislative powers.[155] As such, respondents submit that "she may delegate to the PSLMC the power to fill in the details in the execution, enforcement or administration of Executive Order No. 180, including the power to issue guidelines for the exercise of public sector unionism and to determine the apportionment of incentives to government employees, as provided in Resolution No. 4 series of 2002."[156] The Administrative Code[157] reiterates, under the umbrella of the Civil Service Commission, PSLMC's role in the exercise of the government employees' right to organize.[158]

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[155] *Rollo*, p. 469.

[156] Id. at 469-470.

[157] Executive Order No. 292 (1987), Book V, Title I, Ch. 6, sec. 45 provides:
SECTION 45. *The Public Sector Labor-Management Council.* — A Public Sector Labor-Management Council is hereby constituted to be composed of the following: The Chairman of the Civil Service Commission, as Chairman; the Secretary of Labor and Employment, as Vice-Chairman; and the Secretary of Finance, the Secretary of Justice and the Secretary of Budget and Management, as members. The Council shall implement and administer the provisions of this Chapter. For this purpose, the Council shall promulgate the necessary rules and regulations to implement this Chapter.

[158] *Rollo*, p. 475.

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Respondents contend that the details in PSLMC Resolution No. 4 are "guideposts germane to the objective of the Constitution, Executive Order No. 180 and the Administrative Code of 1987 to promote and improve the terms and conditions of employment of government employees, *subject only to the limitations that are already fixed by law*."[159]

Respondents submit that as the government's central personnel agency, the Civil Service Commission's role "necessarily includes the power to ensure that the statutory provisions relating to the terms and conditions of employment of civil servants are implemented."[160] This means that when Executive Order No. 180 designated the Civil Service Commission Chair as PSLMC Chair, the Civil Service Commission "was simply performing its mandate to 'perform all functions properly belonging to a central personnel agency and *such other functions as may be provided by law*.'"[161]

Moreover, respondents note that Section 15 of Executive Order No. 180 did not subsume the Civil Service Commission under the executive branch, but even strengthened its independence as a constitutional commission by empowering its Chair and other PSLMC members to set the guidelines for government employees' right to organize.[162] Neither did Executive Order No. 180 grant the Commission powers other than those in Article IX-B of the Constitution, considering the proviso that it "shall perform . . . such other functions as may be provided by law." Such law includes Section 45 of the Administrative Code.[163] In other words, respondents argue that the PSLMC issuances implement and detail the broad policies in the Constitution and laws on the government employees' right to self-organization.[164]

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[159] Id. at 471.

[160] Id. at 477.

[161] Id.

[162] Id.

[163] Id. at 478.

[164] Id.

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This Court reiterates that for a constitutional question to be traversed, the alleged violation "must be so demonstrably and urgently egregious that it outweighs a reasonable policy of deference in such specific instance."[165] Nonetheless, Section 15 of Executive Order No. 180, which designated the Civil Service Commission Chair as the PSLMC Chair, seemingly conflicts with the prohibitions imposed upon members of constitutional bodies designed to protect their independence. If such designation is unconstitutional, it puts into serious doubt the legality of PSLMC's acts.

For this reason, this Court resolves and confirms the validity of the designation of the Chair of the Civil Service Commission as the Chair of the PSLMC for being consistent with the Constitution.

The Civil Service Commission is an independent[166] constitutional body governed by Article IX-B of the Constitution. It is composed of a Chairperson and two Commissioners,[167] appointed by the President with the consent of the Commission on Appointments.[168] Section 3 provides its powers and functions:

> SECTION 3. The Civil Service Commission, as the central personnel agency of the Government, shall establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service. It shall strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability. It shall submit to the President and the Congress an annual report on its personnel programs.[169]

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[165] *Parcon-Song v. Song*, G.R. No. 199582, July 7, 2020 [Per J. Leonen, En Banc].

[166] CONST., art. IX-A, sec. 1.

[167] CONST., art. IX-B, sec. 1.

[168] CONST., art. IX-B, sec. 2.

[169] CONST., art. IX-B, sec. 3.

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In *Funa v. Chairman, Civil Service Commission*,[170] this Court held that Article IX-A, Section 2 of the Constitution must be read in conjunction with Article IX-B, Section 7, paragraph 2:

> The underlying principle for the resolution of the present controversy rests on the correct application of Section 1 and Section 2, Article IX-A of the 1987 Constitution, which provide:
>
> > Section 1. The Constitutional Commissions, which shall be independent, are the Civil Service Commission, the Commission on Elections, and the Commission on Audit.
> >
> > Section 2. No Member of a Constitutional Commission shall, during his tenure, hold any other office or employment. Neither shall he engage in the practice of any profession or in the active management or control of any business which in any way may be affected by the functions of his office, nor shall he be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the Government, any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations or their subsidiaries.
>
> Section 1, Article IX-A of the 1987 Constitution expressly describes all the Constitutional Commissions as "independent." Although their respective functions are essentially executive in nature, they are not under the control of the President of the Philippines in the discharge of such functions. Each of the Constitutional Commissions conducts its own proceedings under the applicable laws and its own rules and in the exercise of its own discretion. Its decisions, orders and rulings are subject only to review on *certiorari* by the Court as provided by Section 7, Article IX-A of the 1987 Constitution. To safeguard the independence of these Commissions, the 1987 Constitution, among others, imposes under Section 2, Article IX-A of the Constitution certain inhibitions and disqualifications upon the Chairmen and members to strengthen their integrity, to wit:
>
> > (a) Holding any other office or employment during their tenure;
> >
> > (b) Engaging in the practice of any profession;

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[170] 748 Phil. 169 (2014) [Per J. Bersamin, En Banc].

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(c) Engaging in the active management or control of any business which in any way may be affected by the functions of his office; and

(d) Being financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the Government, any of its subdivisions, agencies or instrumentalities, including government-owned or – controlled corporations or their subsidiaries.

The issue herein involves the first disqualification abovementioned, which is the disqualification from holding any other office or employment during Duque's tenure as Chairman of the CSC. The Court finds it imperative to interpret this disqualification in relation to Section 7, paragraph (2), Article IX-B of the Constitution and the Court's pronouncement in *Civil Liberties Union v. Executive Secretary*.

Section 7, paragraph (2),Article IX-B reads:

Section 7. ...

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

In *Funa v. Ermita*, where petitioner challenged the concurrent appointment of Elena H. Bautista as Undersecretary of the Department of Transportation and Communication and as Officer-in-Charge of the Maritime Industry Authority, the Court reiterated the pronouncement in *Civil Liberties Union v. The Executive Secretary* on the intent of the Framers on the foregoing provision of the 1987 Constitution, to wit:

Thus, while all other appointive officials in the civil service are allowed to hold other office or employment in the government during their tenure when such is allowed by law or by the primary functions of their positions, members of the Cabinet, their deputies and assistants may do so only when expressly authorized by the Constitution itself. In other words, Section 7, Article IX-B is meant to lay down the general rule applicable to all elective and appointive public officials and employees, while Section 13, Article VII is meant to be the exception applicable only to the President, the Vice-President, Members of the Cabinet, their deputies and assistants.

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. . . .

> Since the evident purpose of the framers of the 1987 Constitution is to impose a stricter prohibition on the President, Vice-President, members of the Cabinet, their deputies and assistants with respect to holding multiple offices or employment in the government during their tenure, the exception to this prohibition must be read with equal severity. On its face, the language of Section 13, Article VII is prohibitory so that it must be understood as intended to be a positive and unequivocal negation of the privilege of holding multiple government offices or employment. Verily, wherever the language used in the constitution is prohibitory, it is to be understood as intended to be a positive and unequivocal negation. The phrase "unless otherwise provided in this Constitution" must be given a literal interpretation to refer only to those particular instances cited in the Constitution itself, to wit: the Vice-President being appointed as a member of the Cabinet under Section 3, par. (2), Article VII; or acting as President in those instances provided under Section 7, pars. (2) and (3), Article VII; and, the Secretary of Justice being ex-officio member of the Judicial and Bar Council by virtue of Section 8 (1), Article VIII.
>
> Being an appointive public official who does not occupy a Cabinet position (i.e., President, the Vice-President, Members of the Cabinet, their deputies and assistants), Duque was thus covered by the general rule enunciated under Section 7, paragraph (2), Article IX-B. He can hold any other office or employment in the Government during his tenure if such holding is allowed by law or by the primary functions of his position.[171] (Citations omitted)

Read together, the two constitutional provisions mean that the appointment of a member of a constitutional commission to any governing body must depend on the functions of the government entity on which that member sits. For the Civil Service Commission Chair, it must involve the career development, employment status, rights, privileges, and welfare of government officials and employees. *Funa* elaborates:

> Section 3, Article IX-B of the 1987 Constitution describes the CSC as the central personnel agency of the government and is

[171] Id. at 183-187.

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principally mandated to establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service; to strengthen the merit and rewards system; to integrate all human resources development programs for all levels and ranks; and to institutionalize a management climate conducive to public accountability. Its specific powers and functions are as follows:

(1) Administer and enforce the constitutional and statutory provisions on the merit system for all levels and ranks in the Civil Service;

(2) Prescribe, amend and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws;

(3) Promulgate policies, standards and guidelines for the Civil Service and adopt plans and programs to promote economical, efficient and effective personnel administration in the government;

(4) Formulate policies and regulations for the administration, maintenance and implementation of position classification and compensation and set standards for the establishment, allocation and reallocation of pay scales, classes and positions;

(5) Render opinion and rulings on all personnel and other Civil Service matters which shall be binding on all heads of departments, offices and agencies and which may be brought to the Supreme Court on certiorari;

(6) Appoint and discipline its officials and employees in accordance with law and exercise control and supervision over the activities of the Commission;

(7) Control, supervise and coordinate Civil Service examinations. Any entity or official in government may be called upon by the Commission to assist in the preparation and conduct of said examinations including security, use of buildings and facilities as well as personnel and transportation of examination materials which shall be exempt from inspection regulations;

(8) Prescribe all forms for Civil Service examinations, appointments, reports and such other forms as may be required by law, rules and regulations;

(9) Declare positions in the Civil Service as may properly be primarily confidential, highly technical or policy determining;

(10) Formulate, administer and evaluate programs relative to the development and retention of qualified and competent work force in the public service;

(11) Hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments, and review decisions and actions of its offices and of the agencies attached to it. Officials and employees who fail to comply with such decisions, orders, or rulings shall be liable for contempt of the Commission. Its decisions, orders, or rulings shall be final and executory. Such decisions, orders, or rulings may be brought to the Supreme Court on certiorari by the aggrieved party within thirty (30) days from receipt of a copy thereof;

(12) Issue subpoena and subpoena duces tecum for the production of documents and records pertinent to investigation and inquiries conducted by it in accordance with its authority conferred by the Constitution and pertinent laws;

(13) Advise the President on all matters involving personnel management in the government service and submit to the President an annual report on the personnel programs;

(14) Take appropriate action on all appointments and other personnel matters in the Civil Service including extension of Service beyond retirement age;

(15) Inspect and audit the personnel actions and programs of the departments, agencies, bureaus, offices, local government units and other instrumentalities of the government including government-owned or controlled corporations; conduct periodic review of the decisions and actions of offices or officials to whom authority has been delegated by the Commission as well as the conduct of the officials and the employees in these offices and apply appropriate sanctions when necessary;

(16) Delegate authority for the performance of any functions to departments, agencies and offices where such functions may be effectively performed;

(17) Administer the retirement program for government officials and employees, and accredit government services and evaluate qualifications for retirement;

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(18) Keep and maintain personnel records of all officials and employees in the Civil Service; and

(19) Perform all functions properly belonging to a central personnel agency and such other functions as may be provided by law.

On the other hand, enumerated below are the specific duties and responsibilities of the CSC Chairman, namely:

(1) Direct all operations of the Commission;

(2) Establish procedures for the effective operations of the Commission;

(3) Transmit to the President rules and regulations, and other guidelines adopted by the Chairman which require Presidential attention including annual and other periodic reports;

(4) Issue appointments to, and enforce decisions on administrative discipline involving officials and employees of the Commission;

(5) Delegate authority for the performance of any function to officials and employees of the Commission;

(6) Approve and submit the annual supplemental budget of the Commission; and

(7) Perform such other functions as may be provided by law.

Section 14, Chapter 3, Title I-A, Book V of EO 292 is clear that the CSC Chairman's membership in a governing body is dependent on the condition that the functions of the government entity where he will sit as its Board member must affect the career development, employment status, rights, privileges, and welfare of government officials and employees. Based on this, the Court finds no irregularity in Section 14, Chapter 3, Title I-A, Book V of EO 292 because matters affecting the career development, rights and welfare of government employees are among the primary functions of the CSC and are consequently exercised through its Chairman. The CSC Chairman's membership therein must, therefore, be considered to be derived from his position as such. Accordingly, the constitutionality of Section 14, Chapter 3, Title I-A, Book V of EO 292 is upheld.[172] (Citations omitted)

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[172] Id. at 188-191.

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Executive Order No. 180, which creates the PSLMC, and is reiterated in Book V, Title I, Chapter 6, Section 45 of the Administrative Code of 1987, is a law within the contemplation of the phrase "otherwise allowed by law or the primary functions of his position" in Article IX-B, Section 7, paragraph 2 of the Constitution. Book V, Title I-A, Chapter 3, Section 14 of the Administrative Code of 1987, as upheld in *Funa*, states that the Civil Service Commission Chair may be appointed to "governing bodies of government entities whose functions affect the career development, employment status, rights, privileges, and welfare of government officials and employees, ... and such other similar boards as may be created by law."

Section 15 of Executive Order No. 180 envisioned a coordination body, considering its composition of Civil Service Commission Chair, along with the Secretaries of the Department of Labor and Employment, Department of Finance, Department of Justice, and Department of Budget and Management.[173] Coordination between a constitutional commission and departments of the executive branch, so long as the coordination is not controlled by the executive branch, is not proscribed. With the Civil Service Commission Chair as PSLMC Chair, the PSLMC is not subordinated to the executive branch, and the independence of the Civil Service Commission is not undermined.

Moreover, the work of the PSLMC, through guidelines and other resolutions that implement Executive Order No. 180, enhances the protection of government employees' right to self-organize. Its mandate is well within the Civil Service Commission's primary functions, which encompass "the career development, employment status, rights, privileges, and welfare of government officials and employees"[174] as contemplated in *Funa*. Since these primary functions are exercised through the Civil Service Commission Chair, the designation as PSLMC Chair, to oversee the implementation of Executive Order No.

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[173] Executive Order No. 180 (1987), sec. 15.

[174] *Funa v. Chairman, Civil Service Commission*, 748 Phil. 169, 190 (2014) [Per J. Bersamin, En Banc].

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180, does not violate Article IX-A, Section 2 in relation to Article IX-B, Section 7 of the Constitution.

V

This case also raised the question of whether Section 5 of PSLMC Resolution No. 4 violated Article VI, Section 25 (5) of the Constitution, which proscribes the transfer of appropriations. Respondents claim:

> The apportionment of government savings is not included in said proscription because *this money has not been "realigned" from its intended use, as envisioned under Article VI, Section 25 (5) of the 1987 Constitution, but had already been set apart from the public treasury by Congress* as unutilized funds, through the General Appropriations Act (GAA). To be sure, Republic Act No. 10352 or the General Appropriations Act of 2012 allows the utilization of savings, including payment of CNA incentives, subject only to compliance with certain conditions. The pertinent provisions of Republic Act No. 10352 states:
>
> . . . .
>
> Considering that the savings is a particular fund that was already set apart from the public treasury as unutilized funds, the President, in the performance of the mandate to faithfully execute the laws, had sufficient discretion to fill in the details as regards its execution, enforcement or administration. Specifically, in issuing Executive Order No. 180 authorizing the PSLMC the power to determine where savings should be allocated (which is now under Administrative Code of 1987), the President was not just exercising legislative power but her executive power to ensure that the laws are faithfully executed. This power necessarily includes the power to administer laws, which means carrying them into practical operation and enforcing their due observance. It is a power borne by the President's duty to preserve and defend the Constitution and execute the laws. Stated otherwise, under the Faithful Execution Clause, the President has the power to take "necessary and proper steps" to carry into execution the law. Truly, once the appropriations bill is signed into law, its implementation becomes the exclusive function of the President.[175] (Emphasis supplied, citations omitted)

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[175] *Rollo*, pp. 472 and 475.

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Article VI, Section 25 (5) of the Constitution reads:

(5) No law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions ***may, by law,*** be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations. (Emphasis supplied)

The proviso that the enumerated persons "may, *by law*, be authorized to augment" means that their discretion to augment appropriations may be limited by law. Thus, Section 55 of the General Appropriations Act of 2012, on the "Rules in the Realignment of Savings for the Payment of Collective Negotiation Agreement Incentives," validly limits the President's discretion:

SECTION 53. *Meaning of Savings and Augmentation*. — Savings refer to portions or balances of any programmed appropriation in this Act free from any obligation or encumbrance which are: (i) still available after the completion or final discontinuance or abandonment of the work, activity or purpose for which the appropriation is authorized; (ii) from appropriation balances arising from unpaid compensation and related costs pertaining to vacant positions and leaves of absence without pay; and (iii) from appropriation balances realized from the implementation of measures resulting in improved systems and efficiencies and thus enabled agencies to meet and deliver the required or planned targets, programs and services approved in this Act at a lesser cost.

Augmentation implies the existence in this Act of a program, activity, or project with an appropriation, which upon implementation or subsequent evaluation of needed resources, is determined to be deficient. In no case shall a non-existent program, activity, or project, be funded by augmentation from savings or by the use of appropriations otherwise authorized in this Act.

SECTION 54. *Rules in the Realignment of Savings.*— Realignment of Savings from one allotment class to another shall require prior approval of the DBM.

Departments, bureaus and offices, including SUCs, are authorized to augment any item of expenditure within Personal Services and MOOE, except intelligence funds which require prior approval from

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the President of the Philippines. However, realignment of savings among objects of expenditures within Capital Outlays shall require prior approval of the DBM.

Notwithstanding the foregoing, realignment of any savings for the payment of magna carta benefits authorized under Section 41 hereof shall require prior approval of the DBM.

SECTION 55. ***Rules in the Realignment of Savings for the Payment of Collective Negotiation Agreement Incentives***.— Savings from allowable MOOE allotments generated out of cost-cutting measures identified in the Collective Negotiation Agreements (CNAs) and supplements thereto may be used for the grant of CNA incentive by agencies with duly executed CNAs: PROVIDED, That the ***one-time annual payment*** of CNA incentives must be made through a ***written resolution*** signed by representatives of both labor and management, and approved by the agency head: PROVIDED, FURTHER, That the funding sources and 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***.[176] (Emphasis supplied)

However, those with political functions, such as the President, should be distinguished from those with fiscal autonomy[177] and governed by separate constitutional provisions.

Article VI, Section 25 (5) must be interpreted in light of the provisions for those that enjoy fiscal autonomy. Article VIII, Section 3 of the Constitution, for example, provides for the Judiciary's fiscal autonomy in that its appropriations "may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released."[178] This provision is unique to the

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[176] Id. at 473-475.

[177] CONST., art. VI, sec. 25 (5) only states "heads of Constitutional Commissions," yet there are other constitutional bodies that enjoy fiscal autonomy, such as the Commission on Human Rights and the Office of the Ombudsman, but this awaits the proper case.

[178] CONST., art. VIII, sec. 3.

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Judiciary, and creates a different scenario for its budget and any consequent savings.

VI

Petitioners argue that Budget Circular No. 2011-5 modifies and altogether nullifies specific provisions of validly executed CNAs in violation of the constitutional provision on non-impairment of obligations.[179] They discuss that the Constitution guarantees the right of government employees to collective bargaining and negotiation, and that these government employees have vested rights in validly consummated CNAs.[180]

Respondents counter that no vested rights to CNA incentives exist. For respondent Secretary Abad, these incentives depend on several conditions such as the generation of savings,[181] and are different from collective bargaining agreements in that government employees have no right to bargain collectively.[182] Respondent Secretary Soliman submits that a CNA grant "is not a contract within the purview of the non-impairment clause";[183] instead, it depends on compliance with budget policies and guidelines.[184]

This Court rules that petitioners have no vested rights to CNA incentives. Nonetheless, under the circumstances of this case, the order to return the excess ₱5,000.00 received by the affected employees was erroneous.

As early as 1928, *Balboa v. Farrales*[185] defined "vested right" as "some right or interest in property which has become fixed and established and is no longer open to doubt or controversy."[186]

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[179] *Rollo*, p. 339.

[180] Id. at 348.

[181] Id. at 294-295.

[182] Id. at 297.

[183] Id. at 267.

[184] Id. at 268.

[185] 51 Phil. 498 (1928) [Per J. Johnson, En Banc].

[186] Id. at 502.

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In 1956, *Benguet Consolidated Mining Company v. Pineda*[187] discussed that "[t]he right must be absolute, complete, and unconditional, independent of a contingency, and a mere expectancy of future benefit, or a contingent interest in property founded on anticipated continuance of existing laws, does not constitute a vested right."[188]

Several factors may be considered in determining when rights "vest." We consider the source of the right—the Constitution, a statute, or a regulation. The right must have a legal basis. The nature of the prestation must also be examined. The right must be absolute; otherwise, conditional rights vest once compliance with all conditions is shown. The prestation should also be clear; it cannot be broad, or subject to further implementation or clarification. As to the effect of the right, public good outweighs private interest. In any event, laws generally only create expectations.

The concept of "vested right" has been used in cases on employee benefits. In *Boncodin v. NAPOCOR Employees Consolidated Union*,[189] which involved salary step increments, this Court discussed:

> A vested right is one that is absolute, complete and unconditional; to its exercise, no obstacle exists; and it is immediate and perfect in itself and not dependent upon any contingency. To be vested, a right must have become a title — legal or equitable — to the present of future enjoyment of property.[190] (Citations omitted)

Labor cases have held that "where there is an established employer practice of regularly, knowingly and voluntarily granting benefits to employees over a significant period of time, despite the lack of a legal or contractual obligation on the part of the employer to do so, the grant of such benefits ripens into

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[187] 98 Phil. 711 [Per J. J.B.L. Reyes, En Banc].

[188] Id. at 722.

[189] 534 Phil. 741 (2006) [Per C.J. Panganiban, En Banc].

[190] Id. at 757.

a vested right of the employees and can no longer be unilaterally reduced or withdrawn by the employer."[191]

Government Service Insurance System v. Montesclaro[192] discussed:

> In a pension plan where employee participation is mandatory, the prevailing view is that employees have contractual or vested rights in the pension where the pension is part of the terms of employment. ...
>
> Thus, where the employee retires and meets the eligibility requirements, he acquires a vested right to benefits that is protected by the due process clause.[193]

Employees in the private sector have the right to self-organize for purposes of collective bargaining, among others.[194] The Labor Code governs collective bargaining for private employees. Collective bargaining agreements include grants of employee benefits.

Employees in the public sector also have the right to self-organize.[195] Executive Order No. 180 governs their right to organize "for the furtherance and protection of their interests."[196] However, collective negotiation agreements include employment terms and conditions not fixed by law:

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[191] *Metropolitan Bank and Trust Company v. NLRC*, 607 Phil. 359, 373 (2009) [Per J. Leonardo-de Castro, First Division]. *See*, for example, *Oceanic Pharmacia Employees Union v. Inciong*,182 Phil. 597 (1979) [Per J. Abad Santos, Second Division]; *Davao Integrated Port Services, Inc. v. Abarquez*, 292-A Phil. 302 (1993) [Per J. Romero, Third Division]; *Republic Planters Bank v. NLRC*, 334 Phil. 124 (1997) [Per J. Bellosillo, First Division] and *Manila Electric Company v. Quisumbing*, 361 Phil. 845 (1999) [Per J. Martinez, First Division].

[192] 478 Phil. 573 (2004) [Per J. Carpio, En Banc].

[193] Id. at 584.

[194] CONST., art. XIII, sec. 3; LABOR CODE, Book V, Rule II, sec. 1.

[195] CONST., art. XIII, sec. 3; art. IX-B, sec. 2 (5).

[196] Executive Order No. 180 (1987), sec. 2.

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SECTION 13. Terms and conditions of employment or improvements thereof, *except those that are fixed by law*, may be the subject of negotiations between duly recognized employees' organizations and appropriate government authorities.[197] (Emphasis supplied)

Thus, it is "the legislative and — when properly given delegated power — the administrative heads of government that fix the terms and conditions of employment through statutes or administrative circulars, rules and regulations."[198] Also, "the process of collective negotiations in the public sector does not encompass terms and conditions of employment requiring the appropriation of public funds."[199]

Petitioners now invoke their CNA, raising the non-impairment clause under the Constitution.[200]

As contracts create the law between the parties,[201] they produce binding juridical rights and obligations. The power of private individuals to enter into contracts is protected by their autonomy implicit in the constitutional guarantee of due process,[202] among others, but subject to reasonable limitations by valid law.

This case involves the CNA incentive. CNA incentive is not compensation since Congress passed Republic Act No. 6758.[203] It is not a signing bonus, since *Social Security System v.*

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[197] Executive Order No. 180 (1987), sec. 13.

[198] *Boncodin v. NAPOCOR Employees Consolidated Union*, 534 Phil. 741, 757-758 (2006) [Per C.J. Panganiban, En Banc] citing *Alliance of Government Workers v. Minister of Labor*, 209 Phil. 1 (1983) [Per J. Gutierrez, Jr., En Banc].

[199] *Social Security System v. Commission on Audit*, 433 Phil. 946, 957 (2002) [Per J. Bellosillo, En Banc].

[200] CONST., art. III, sec. 10. No law impairing the obligation of contracts shall be passed.

[201] *TSPIC Corporation v. TSPIC Employees Union*, 568 Phil. 774, 783 (2008) [Per J. Velasco, Second Division].

[202] CONST., art. III, sec. 1.

[203] Republic Act No. 6758 (1989).

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Commission on Audit[204] disallowed the grant of signing bonuses for government employees. It is not an award for service excellence since Civil Service Commission Memorandum No. 01, series of 2001, established the Program on Awards and Incentives for Service Excellence (PRAISE).[205]

PSLMC Resolution No. 4 provides that "CNA Incentive is linked with agency performance and productivity,"[206] "intended to be charged against free unencumbered savings of the agency, which are no longer intended for any specific purpose."[207] It is an incentive to produce efficiently by meeting targets and generating savings.

Thus, a CNA incentive is not per se vested. Its grant is conditioned on the applicable laws, rules and regulations that govern it, including the assailed Budget Circular No. 2011-5 insofar as its provisions are consistent with PSLMC resolutions implementing Executive Order No. 180. For one, PSLMC Resolution No. 4 requires the existence of "savings generated after the signing of the CNA."[208] Savings also depend on constitutional prerogatives.

However, we agree with petitioners' position against the retroactive application of Budget Circular No. 2011-5 to CNA incentives already released to the employees.[209]

While the Department of Budget and Management can generally impose conditions for the grant of CNA incentives, in this case, the conditions were imposed after the benefits had already been released and received by the employees. The Department had not put in place a ceiling on CNA incentives when the ₱30,000.00 CNA incentive—the total amount from

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[204] 433 Phil. 946 (2002) [Per J. Bellosillo, En Banc].

[205] *See* Budget Circular No. 2006-1 (2006), sec. 5.4.2.

[206] PSLMC Resolution No. 4 (2002), sec. 6.

[207] PSLMC Resolution No. 4 (2002), whereas clauses.

[208] PSLMC Resolution No. 4 (2002), sec. 1.

[209] *Rollo*, p. 350.

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the October 26, 2011 and December 3, 2011 memoranda issued by respondent Secretary Soliman—was granted. Budget Circular No. 2011-5, which contains the ₱25,000.00 ceiling, was issued only on December 26, 2011 and published only on February 25, 2012.[210] Thus, the benefits had already been vested in the employees' behalf.

Likewise, we confirm petitioners' argument that the January 20, 2012 Memorandum directing the refund of CNA incentives paid violated Section 43 of the General Appropriations Act of 2011.[211]

Section 43 enumerates the authorized deductions from employees' salaries as follows:

> SECTION 43. Authorized Deductions. — Deductions from salaries, emoluments or other benefits accruing to any government employee chargeable against the appropriations for Personal Services may be allowed for the payment of individual employee's contributions or obligations due the following:
>
> (a) The BIR, GSIS, HDMF and PHILHEALTH;
>
> (b) Mutual benefits associations, thrift banks and non-stock savings and loan associations duly operating under existing laws which are managed by and/or for the benefit of government employees;
>
> (c) Associations/cooperatives/provident funds organized and managed by government employees for their benefit and welfare;
>
> (d) Duly licensed insurance companies accredited by national government agencies; and
>
> (e) Organizations or companies such as banks, non-bank financial institutions, financing companies and other similar entities that have authority to engage in lending and mutual benefits or mutual aid system as stated in their respective constitutions and by-laws approved by government regulating bodies such as the Securities and Exchange Commission (SEC), Insurance Commission (IC), Bangko Sentral ng Pilipinas (BSP) and Cooperative Development Authority (CDA).

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[210] Id.

[211] Id. at 341.

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PROVIDED, That such deductions shall not reduce the employee's monthly net take home pay to an amount lower than Three Thousand Pesos (₱3,000),after all authorized deductions: PROVIDED, FURTHER, That in the event total authorized deductions shall reduce net take home pay to less than Three Thousand Pesos (₱3,000),authorized deductions under item (a) shall enjoy first preference, those under item (b) shall enjoy second preference, and so forth.

As petitioners had argued, the list of allowable salary deductions in the General Appropriations Act does not include excess CNA incentives. We also note that the Memorandum should not have been authorized only by the Assistant Secretary, but must also bear the signature of approval and conforme of respondent Secretary Soliman.

Thus, the January 20, 2012 Memorandum, which required employees of the Department of Social Welfare and Development to refund the ₱5,000.00 excess through deductions from their salaries, is void.

VII

Unlike private sector employees whose employment terms and conditions are governed by collective bargaining agreements entered by labor federations through collective bargaining,[212] the employment terms and conditions of public sector employees are fixed through statutes, rules and regulations.[213] The right of government employees to organize is only "for the furtherance and protection of their interests."[214]

It is true that Republic Act No. 6758, or the Salary Standardization Law, applies to "all positions, appointive or elective, on full or part-time basis, now existing or hereafter created in the government, including government-owned or controlled corporations and government financial

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[212] CONST., art. XIII, sec. 3; LABOR CODE, Book V, Rule II, sec. 1.

[213] *Boncodin v. NAPOCOR Employees Consolidated Union*, 534 Phil. 741, 757-758 (2006) [Per C.J. Panganiban, En Banc] citing *Alliance of Government Workers v. Minister of Labor*, 209 Phil. 1 (1983) [Per J. Gutierrez, Jr., En Banc]. *See also* LABOR CODE, art. 277.

[214] Executive Order No. 180 (1987), sec. 2.

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institutions."[215] Nevertheless, not all government employees are similarly situated or share the same interest.

Traditional classifications distinguish between governmental functions and proprietary functions.[216] The Philippine Charity Sweepstakes Office, for example, can engage in profit-oriented activities as "the principal government agency for raising and providing for funds for health programs, medical assistance and services, and charities of national character[.]"[217] Government-owned and controlled corporations perform both governmental and proprietary functions.[218] Developments in modern society later rendered such distinctions outdated.[219]

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[215] Republic Act No. 6758 (1989), sec. 4 provides:
SECTION 4. Coverage. — The Compensation and Position Classification System herein provided shall apply to all positions, appointive or elective, on full or part-time basis, now existing or hereafter created in the government, including government-owned or controlled corporations and government financial institutions.
The term "government" refers to the Executive, the Legislative and the Judicial Branches and the Constitutional Commissions and shall include all, but shall not be limited to, departments, bureaus, offices, boards, commissions, courts, tribunals, councils, authorities, administrations, centers, institutes, state colleges and universities, local government units, and the armed forces. The term "government-owned or controlled corporations and financial institutions" shall include all corporations and financial institutions owned or controlled by the National Government, whether such corporations and financial institutions perform governmental or proprietary functions.

[216] *See Alliance of Government Workers v. Minister of Labor*, 209 Phil. 1 (1983) [Per J. Gutierrez, Jr., En Banc].

[217] Republic Act No. 1169 (1954), as amended, sec. 1.

[218] Presidential Decree No. 2029 (1986), *Defining Government Owned or Controlled Corporations and Identifying Their Role in National Development*, provides:
SECTION 2. A government-owned or controlled corporation is a stock or non-stock corporation, whether performing governmental or proprietary functions, which is directly chartered by a special law or if organized under the general corporation law is owned or controlled by the government directly, or indirectly through a parent corporation or subsidiary corporation, to the extent of at least a majority or its outstanding capital stock or if its outstanding voting capital stock.

[219] *See Alliance of Government Workers v. Minister of Labor*, 209 Phil. 1 (1983) [Per J. Gutierrez, Jr., En Banc].

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Even within a government body, its employees are not necessarily similarly situated. The University of the Philippines Charter grants its Board of Regents the power "to receive and appropriate all sums as may be provided by law for the support of the national university to the ends specified by law, and all other sums in the manner it may, in its discretion, determine to carry out the purposes and functions of the national university[.]"[220] Those holding academic positions such as faculty members have different interests and opportunities from those holding non-academic positions.

There are also those that enjoy fiscal autonomy, such as the constitutional commissions.[221]

Perhaps, lobbying before Congress and the proper authorities for more benefits, such as compensation increase, may be the better course for those in the public sector.[222] For other labor matters not fixed by law, government employees can course their concerns through their labor organization with members sharing similar interests.

WHEREFORE, the Petition is **PARTIALLY GRANTED**. The January 20, 2012 Memorandum requiring employees of the Department of Social Welfare and Development to refund the ₱5,000.00 excess through deductions from their salaries is **VOID**.

SO ORDERED.

Peralta, C.J., Gesmundo, Hernando, Carandang, Lopez, Delos Santos, Gaerlan, and *Rosario, JJ.*, concur.

Perlas-Bernabe, J., see separate concurring opinion.

Caguioa, J., see concurring opinion.

Lazaro-Javier, Inting, and *Zalameda, JJ.*, on official leave.

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[220] Republic Act No. 9500 (2008), sec. 13 (n).

[221] CONST, art. IX, sec. 5; Exec. Order No. 292, Book II, Chapter 5, Sec. 26 (1987).

[222] *See* Amended Rules and Regulations Governing the Exercise of the Right of Government Employees to Organize (2004), Rule XII, Sec. 5, available at <http://web.csc.gov.ph/cscsite2/2014-02-21-08-28-23/pdf-files/file/777-irr-of-e-o-180> (last visited on 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. 2011-5[1] 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 <u>administer</u> the compensation**

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[1] Subject: Supplemental Guidelines on the Grant of Collective Negotiation Agreement (CNA) Incentive for Fiscal Year (FY) 2011, 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:

> 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.

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and position classification system [(CPCS)] of the national government"[3] **and** "**revise it as necessary**."[4] Pursuant to Presidential Decree Nos. 985[5] and 1597,[6] and more recently, Republic Act No. 6758,[7] the CPCS covers the payment of **compensation**[8] 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

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[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

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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***

> 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 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

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

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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.

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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. 4, series of 2002 and PSLMC Resolution No. 2, series of 2003,[17] **Administrative Order No. 135, series of 2005**[18] **(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 PRAISE[20] 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**:

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[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.

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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)

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.

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[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.

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

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

x x x x

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[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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(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

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[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.

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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 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**

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

[33] Id. at 63.

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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, 2011[34] 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, 2011[36] 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 regulation[38] which is simply unfair and unjust.

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**.

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[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).

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CONCURRING OPINION

CAGUIOA, *J.*:

I agree that the employees of the Department of Social Welfare and Development (DSWD) should no longer be required to return the excess Collective Negotiation Agreement Incentives (CNAIs) they received. I write only to expound on the power of the Secretary to order refunds or readjustments in case of overpayment of salaries and other benefits released to its employees.

In gist, my position is that even as Department of Budget and Management Budget Circular No. 2011-5 (DBM BC 2011-5) setting the ₱25,000.00 ceiling on CNAIs is valid, it cannot be given retroactive effect so as to force the return of the "excess" ₱5,000.00 by employees because they received the said CNAIs at the time when no ceiling had been set. Thus, the Memorandum by the Undersecretary of the DSWD ordering the refund of the excess CNAI — while it could be a valid exercise of control and supervision over the department and a measure of fiscal responsibility — cannot be given effect under the facts of this case.

Secretary's power to order a refund in case of overpayment

I agree that the DSWD Memorandum ordering the refund of the ₱5,000.00 excess CNAIs cannot be given effect. The CNAIs were granted by the Department at a time when no cap existed. Thus, no existing regulation was violated by the Secretary's grant and the consequent employees' receipt of the CNAIs. For this reason alone, I submit that the DSWD Memorandum is void and of no legal effect.

That said, the Secretary is, in my view, fully empowered under appropriate circumstances to effect a refund in case of overpayment or undue payment of salaries and other additional compensation within her department. Section 6, Chapter 2, Book

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IV of the Administrative Code of 1987[1] vests the power of supervision and control upon the Department Secretary, thus:

> SEC. 6. *Authority and Responsibility of the Secretary*.— The authority and responsibility for the exercise of the mandate of the Department and for the discharge of its powers and functions shall be vested in the Secretary, who shall have **supervision and control** of the Department. (Emphasis and underscoring supplied)

In relation thereto, and more specific to the issue at hand, Presidential Decree No. 1445[2] provides:

> **Section 2.** *Declaration of Policy*. It is the declared policy of the State that all resources of the government shall be managed, expended or utilized in accordance with law and regulations, and safeguard against loss or wastage through illegal or improper disposition, with a view to ensuring efficiency, economy and effectiveness in the operations of government. The **responsibility** to take care that such policy is faithfully adhered to rests directly with **the chief or head of the government agency** concerned. (Emphasis and underscoring supplied)
>
> x x x x
>
> **Section 102.** *Primary and secondary responsibility.*
>
> 1. The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency.

Under the belief — albeit mistaken — that an overpayment has been made, the action taken by the DSWD Secretary is justified and within her powers. The responsibility attaching to the Department Secretary to safeguard the funds of her department, coupled with her general power of supervision and control, authorizes her to countermand any issuance or grant of compensation should she later find out that this was improper or irregular.

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[1] Approved on July 25, 1987.

[2] Approved on June 11, 1978.

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Thus, I cannot join the *ponencia* in ruling that the DSWD Secretary's measure of directing the refund of excess CNAIs violated Section 43 of Republic Act No. 10147 of the General Appropriations Act of 2011 (2011 GAA). Section 43 of the 2011 GAA provides:

> SECTION 43. *Authorized Deductions*.— Deductions from salaries, emoluments or other benefits accruing to any government employee chargeable against the appropriations for Personal Services may be allowed for the payment of individual employee's contributions or obligations due the following:
>
> (a) The BIR, GSIS, HDMF and PHILHEALTH;
>
> (b) Mutual benefits associations, thrift banks and non-stock savings and loan associations duly operating under existing laws which are managed by and/or for the benefit of government employees;
>
> (c) Associations/cooperatives/provident funds organized and managed by government employees for their benefit and welfare;
>
> (d) Duly licensed insurance companies accredited by national government agencies; and
>
> (e) Organizations or companies such as banks, non-bank financial institutions, financing companies and other similar entities that have authority to engage in lending and mutual benefits or mutual aid system as stated in their respective constitutions and by-laws approved by government regulating bodies such as the Securities and Exchange Commission (SEC), Insurance Commission (IC), Bangko Sentral ng Pilipinas (BSP) and Cooperative Development Authority (CDA).
>
> PROVIDED, That such deductions shall not reduce the employee's monthly net take home pay to an amount lower than Three Thousand Pesos (₱3,000),after all authorized deductions: PROVIDED, FURTHER, That in the event total authorized deductions shall reduce net take home pay to less than Three Thousand Pesos (₱3,000),authorized deductions under item (a) shall enjoy first preference, those tender item (b) shall enjoy second preference, and so forth.

While Section 43 lists the deductions from salaries and other benefits of government employees that may be allowed, I am

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unable to agree that this authorization is an exclusive list which forecloses other valid salary deductions, including those that may be ordered by a head of agency pursuant to her power of control and supervision and as a measure of fiscal responsibility.

An example of an allowable refund is in the case of improper salary adjustment or step increment under the Manual on Position Classification and Compensation[3] and DBM BC No. 2020-4.[4] This same form was used by the Court's Office of Administrative Services in implementing the salary adjustments under Executive Order No. 201 and is still being used in Notices of Step Increment. Section 43 cannot prevent a refund in the form of salary deduction if the same is done with the conformity of the employee concerned.

As the mode of refund or payment, salary deductions are also allowed by issuances other than Section 43: Office of the Court Administrator (OCA) Circular No. 63-2012[5] provides that requests to make payment of fines in administrative cases through staggered salary deductions may be recommended for approval of the Court, and Commission on Audit (COA) Resolution No. 2015-031[6] allows government employees held liable for COA disallowances to settle disallowed salaries and personal benefits, allowances or emoluments by installments through monthly payroll deductions, subject only to the minimum take home pay requirements in the GAA.[7]

ACCORDINGLY, I vote to **PARTLY GRANT** the petition.

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[3] See Annex "B," Manual on Position Classification and Compensation, Chapter 3, pp. 3-17: The Notice of Step Increment pertinently provides:

This step increment is subject to post-audit by the Department of Budget and Management and to appropriate re-adjustment and **refund** if found not in order. (Emphasis and underscoring supplied)

[4] See Sec. 7.3

[5] GUIDELINES ON THE ENFORCEMENT OF THE PAYMENT OF FINES IN ADMINISTRATIVE CASES, approved on July 10, 2012.

[6] POLICY ON SETTLEMENT OF AUDIT DISALLOWANCES BY PERSONS LIABLE, approved on August 20, 2015.

[7] Id. at Sec. 3.