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[G.R. No. 243503. September 15, 2020]

ESTER B. VELASQUEZ, JUAN V. BOLO, ELADIO C. DIOKO, and GLEN M. PESOLE, as Former Members of the Board of Regents of the Cebu Normal University, *Petitioners, v.* **COMMISSION ON AUDIT**, *Respondent*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; HIGHER EDUCATION MODERNIZATION ACT OF 1997 (RA 8292); THE RULING THAT JUDICIAL INTERPRETATION OF SECTION 4(d) OF RA 8292 IN THE CASE OF *BENGUET STATE UNIVERSITY* RETROACTS AS OF THE DATE THE LAW WAS ENACTED IN 1997, REITERATED AND APPLIED. — In the case of *Benguet State University*, the Court applied the statutory construction doctrine of *ejusdem generis* in construing that the power of the governing boards of government educational institutions are not plenary and absolute. Consequently, their power to defray their income is limited to disbursements for programs and projects intended for instruction, research, and extension. The Court interpreted "other programs or projects" as those programs/projects which are of similar nature to academic programs/projects for instruction, research, and extension. Guided by the pronouncement of the Court in the case of *Castro*, it is clear that the judicial interpretation of Section 4(d) of R.A. No. 8292 in the case of *Benguet State University* must be applied retroactively. Such interpretation did not revisit nor overturn an existing doctrine. Contrary to petitioners' assertion, the ruling of the Court in the *Benguet State University* case retroacts as of the date that R.A. No. 8292 was enacted in 1997. In fact, such construction was upheld in the 2019 case of *Rotoras v. Commission on Audit.* Therein, the Court identified that the tuition fees and other necessary school charges collected by the government educational institution constitute as special trust fund, which shall be used solely for instruction, research, extension, or other programs or projects of similar nature.

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2. ID.; CONSTITUTIONAL LAW; COMMISSION ON AUDIT (COA); THE GRANT OF QUARTERLY RICE SUBSIDY AND *KALAMPUSAN* AWARD IN FAVOR OF CEBU NORMAL UNIVERSITY (CNU) EMPLOYEES, WHICH ARE APPARENTLY NOT IN LINE WITH ACADEMIC PURPOSES, ARE BEYOND THE POWERS OF THE BOARD OF DIRECTORS OF CNU, THUS, THE QUESTIONED NOTICES OF DISALLOWANCE (NDs) ISSUED BY COA ARE CORRECT. — With the retroactive application of the *Benguet State University* case, the grant of the quarterly rice subsidy and the incentives for the *Kalampusan* Award, which are apparently not in line with academic purposes, are beyond the powers of the BOR of CNU. Thus, the issuances of the NDs by the Commission Proper is correct.

3. ID.; ID.; ID.; ID.; HAVING ACTED IN GOOD FAITH WHEN THEY AUTHORIZED THE GRANT OF THE RICE SUBSIDY ALLOWANCE AND THE *KALAMPUSAN* AWARD, PETITIONERS ARE ABSOLVED FROM LIABILITY; NEITHER THE EMPLOYEES WHO RECEIVED SUCH INCENTIVES CAN BE HELD LIABLE TO REFUND THE SAME. — In this case, petitioners acted in good faith when they authorized the grant of rice subsidy allowance and the *Kalampusan* Award through the issuance of Board Resolutions in 2003 and 2004. Notably, it was only when the Court decided the case of *Benguet State University* in 2007 that the interpretation of the provisions of Section 4(d) of R.A. No. 8292 on the authority of the governing board of a government educational institution to disburse its income was settled. Prior to the Court's pronouncement in 2007, petitioners were utterly convinced that the grant of such incentives, relating to the efficiency and productivity of CNU employees, was in accordance with law. Neither can the payees of such incentives be held liable for the refund. Based on *Madera*, the Court resolves to excuse the return in this case. The disallowed rice subsidy is a reasonable amount of financial assistance which may be excused under No. 2(d) of the aforementioned Rules on Return, while the *Kalampusan* Award which was granted in consideration of services rendered, and is, thus, likewise excused under No. 2(d) of the same Rules only on the ground of undue prejudice to payees if the Court require the return of amounts they received 16 years earlier. Following our pronouncement in *Madera*, the Court holds that the petitioners, as approving officers, and

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recipients of the rice subsidy allowance and the *Kalampusan* Award are not liable to refund the amount received.

APPEARANCES OF COUNSEL

Felipe S. Velasquez for petitioners.
Terrence A.L. Fernandez, collaborating counsel for petitioners.
The Solicitor General for respondent.

D E C I S I O N

REYES, J. JR., *J.*:

Assailed in this Petition for *Certiorari*[1] are the Decision[2] dated January 28, 2015 and the Resolution[3] dated January 30, 2018 of the Commission on Audit (COA; Commission Proper), upholding Notice of Disallowance (ND) No. 2004-12-101-(2003) and ND Nos. 2004-04-101-(2003) to 2004-10-101-(2003), all of which are dated September 2, 2005, which involve the grant of the quarterly rice subsidy and the *Kalampusan* Award, respectively, in favor of Cebu Normal University (CNU) employees.

The Factual Antecedents

In Board Resolution No. 18, Series of 2003,[4] the members of the Board of Regents (BOR) of the CNU, consisting some of herein petitioners, approved the proposed Special Trust Fund Budget in the amount of ₱9,304,981.53. Among those listed in the proposed expenditures include the quarterly rice allowance for CNU employees, COA resident auditors, and members of the BOR.[5]

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[1] *Rollo*, pp. 158-181.

[2] Id. at 182-184.

[3] Id. at 185-191.

[4] Id. at 40.

[5] Id. at 41.

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Subsequently, Board Resolution No. 28, Series of 2004,[6] approving the proposed budget for the use of university income, was issued by the BOR of CNU. The quarterly rice subsidy was likewise included among its proposed expenditures.[7]

The members of the BOR of CNU likewise granted the *Kalampusan* Award of ₱20,000.00 for each employee in recognition of his/her accomplishments manifested through the exemplary performance of CNU's graduates in various licensure examinations through Board Resolution No. 91, Series of 2003[8]

On September 2, 2005, the COA issued ND No. 2004-12-101-(2003),[9] stating that, among others, the disbursements in the amount of ₱1,277,240.00 pertaining to the grant of rice subsidy, were without legal basis and in violation of Section 5 of Presidential Decree (P.D.) No. 1597:

> SEC. 5. *Allowances, Honoraria, and Other Fringe Benefits*. Allowances, honoraria and other fringe benefits which may be granted to government employees, whether payable by their respective offices or by other agencies of government, shall be subject to the approval of the President upon recommendation of the Commissioner of the Budget. For this purpose, the Budget Commission shall review on a continuing basis and shall prepare, for the consideration and approval of the President, policies and levels of allowances and other fringe benefits applicable to government personnel, including honoraria or other forms of compensation for participation in projects which are authorized to pay additional compensation.

On even date, ND No. 2004-04-101-(2003)[10] was issued. Similarly, the grant of the quarterly rice subsidy was viewed by the COA as made without legal basis and in violation of Section 4(1), P.D. No. 1445:

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[6] Id. at 42.

[7] Id. at 43.

[8] Id. at 186.

[9] Id. at 45-50.

[10] Id. at 51-55.

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SEC. 4. *Fundamental principles*. Financial transactions and operations of any government agency shall be governed by the fundamental principles set forth hereunder, to wit:

1. No money shall be paid out of any public treasury of depository except in pursuance of an appropriation law or other specific statutory authority.

In addition, ND No. 2004-10-101-(2003),[11] disapproving the disbursement of funds pertaining to the *Kalampusan* Award for having no legal bases, was issued by the COA.

Petitioners appealed the NDs, but such appeal was denied in Legal Services Sector (LSS) Decision No. 2010-011[12] dated February 3, 2010. Ruling against the petitioners, the COA LSS of the COA Central Office, through Director Amante A. Liberato, affirmed the NDs and held the petitioners solely liable for the refund of the disallowed benefits.

Aggrieved, petitioners filed a petition for review before the Commission Proper. In the assailed Decision[13] dated January 28, 2015, the petition was dismissed for belated filing.

Under the 2009 Revised Rules of Procedure of the COA, an appeal to the Director must be filed within six months or 180 days after the receipt of the ND, and the period of appeal before the Commission Proper shall be taken within the time remaining of the six months under the proceedings before the Director. The Commission Proper observed that the receipt of LSS Decision No. 2010-011 dated February 3, 2010 was on September 1, 2010, yet the petition for review was filed only on March 1, 2011, resulting in a lapse of 181 days. As such, the decision of the COA LSS has become final and executory:

WHEREFORE, the instant Petition for Review of the Board of Regents of the Cebu Normal University is hereby DISMISSED for being filed out of time. Accordingly, COA Legal Services Sector

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[11] Id. at 69-70.

[12] Id. at 88-94.

[13] Supra note 2.

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Decision No. 2010-011 dated February 3, 2010 is final and executory.[14]

Petitioners filed a Motion for Reconsideration, arguing that they filed the petition within 174 days or on February 22, 2011; and that they should not be held liable for the refund following the case of *Benguet State University v. Commission on Audit*,[15] wherein the members of the BOR, who granted rice subsidy and health allowances to school employees by virtue of a Board Resolution, were not required to refund the disallowed amounts on account of good faith.[16]

In the assailed Resolution[17] dated January 30, 2018, the Commission Proper clarified that the petition was filed within the reglementary period and confirmed that the filing was done on February 22, 2011. However, it ruled for the denial of the Motion as the members of the BOR acted beyond their powers in granting the quarterly rice subsidy and the *Kalampusan* Award. Likewise reliant on the case of *Benguet State University*, the COA maintained that the BOR is authorized to disburse the income generated by the CNU only for instruction, research, extension, or other programs/projects of similar nature under Section 4(d) of R.A. No. 8292. Thus, the act of granting the quarterly rice subsidy and the *Kalampusan* Award, which were not intended for academic programs, was outside the power of the BOR of CNU.

On this note, the COA sustained the solidary liability of petitioners to refund the disallowed amount on ground of bad faith.

Thus:

WHEREFORE, premises considered, the Motion for Reconsideration of the Board of Regents (BOR), Cebu Normal University, of Commission on Audit Decision No. 2015-10 dated January 28, 2015, is hereby

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[14] *Rollo*, p. 183.

[15] 551 Phil. 878 (2007).

[16] *Rollo*, p. 186.

[17] Supra note 3.

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DENIED. Accordingly, Notice of Disallowance (ND) No. 2004-12-101[-](2003) dated September 2, 2005, on the grant of quarterly rice subsidy, in the amount of ₱1,277,240.00, and ND Nos. 2004-04-101[-](2003) to 2004-10-101[-](2003) of even date on the *Kalampusan* [A]ward given to the employees of CNU, amounting to ₱3,708,000.00, or in the total amount of ₱4,985,240.00, are AFFIRMED. However, the passive recipients need not refund the amounts they received on account of good faith.

The CNU BOR and the approving/certifying officials shall be jointly and severally liable for the disallowances.[18]

Seeking relief from the ruling of the COA, petitioners filed this instant petition.

Essentially, petitioners argue that the COA acted with grave abuse of discretion in affirming the NDs on the grant of the quarterly rice subsidy and the *Kalampusan* Award. Petitioners maintain that at the time of the issuance of the Board Resolutions in 2003 and 2004, there was no definitive ruling yet on the incentives and benefits that the governing board of government educational institutions may legally provide their employees. It was only when the *Benguet State University* case was promulgated in 2007 when an interpretation on the power of the BOR was clarified; thus, the application of such case must be prospective. Corollary, petitioners insist that they should not be held solidarily liable for the refund of the disallowed amounts on the basis of good faith.[19]

In their Comment,[20] the COA avers that the *Benguet State University* case should be retroactively applied as judicial interpretation of statutes constitutes a part of the law of the land as of the date they were passed; and that petitioners cannot be deemed to have acted in good faith as they are senior officials of the CNU who were expected to have knowledge of laws, rules or regulations.

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[18] *Rollo*, pp. 190-191.

[19] Id. at 165-167.

[20] Id. at 312-330.

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The Issues

For consideration of the Court are the following issues: (1) did the COA correctly disallow the quarterly rice subsidy and the *Kalampusan* Award; and (2) are petitioners solidarily liable to refund the disallowed amounts?

The Court's Ruling

Jurisprudentially established is the doctrine that "a judicial interpretation of a statute constitutes part of that law as of the date of its original passage." This is so because such interpretation merely clarifies and defines a law in line with the intent of the legislature.[21] In construing a law, the Court essentially delves into its spirit when it was passed.

The effectivity of judicial interpretation, however, varies. As explained in the case of *Castro v. Deloria*:[22]

> Where a judicial interpretation declares a law unconstitutional or abandons a doctrinal interpretation of such law, the Court, recognizing that acts may have been performed under the impression of the constitutionality of the law or the validity of its interpretation, has consistently held that such operative fact cannot be undone by the mere subsequent declaration of the nullity of the law or its interpretation; thus, the declaration can only have a prospective application. But where no law is invalidated nor doctrine abandoned, a judicial interpretation of the law should be deemed incorporated at the moment of its legislation.

Alternatively put, the application of a judicial interpretation is retroactive, except when an old doctrine was overruled by a new one.

In this regard, petitioners' insistence on the prospective application of the Court's declaration in the *Benguet State University* case is hinged on the fact that such case was

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[21] *Castro v. Deloria*, 597 Phil. 18, 25-26 (2009), citing *Roos Industrial Corporation v. National Labor Relations Commission*, 567 Phil. 631, 640 (2008).

[22] Id. at 26.

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promulgated only in 2007, after the approval of the Board Resolutions granting the quarterly rice subsidy and the *Kalampusan* Award in 2003 and 2004.

The authority of the BOR of CNU to disburse funds is found in Section 4(d) of Republic Act (R.A.) No. 8292:

> SEC. 4. *Powers and Duties of Governing Boards*. — The governing board shall have the following specific powers and duties in addition to its general powers of administration and the exercise of all the powers granted to the board of directors of a corporation under Section 36 of Batas Pambansa Blg. 68, otherwise known as the Corporation Code of the Philippines[:]
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> x x x x
>
> d) to fix the tuition fees and other necessary school charges, such as but not limited [to] matriculation fees, graduation fees and laboratory fees, as their respective boards may deem proper to impose after due consultations with the involved sectors.
>
> Such fees and charges, including government subsidies and other income generated by the university or college, shall constitute special trust funds and shall be deposited in any authorized government depository bank, and all interests shall accrue therefrom shall part of the same fund for the use of the university or college: *Provided*, That income derived from university hospitals shall be exclusively earmarked for the operating expenses of the hospitals.
>
> Any provision of existing laws, rules and regulations to the contrary notwithstanding, **any income generated by the university or college from tuition fees and other charges, as well as from the operation of auxiliary services and land grants, shall be retained by the university or college, and may be disbursed by the Board of Regents/Trustees for instruction, research, extension, or other programs/projects of the university or college:** *Provided*, That all fiduciary fees shall be disbursed for the specific purposes for which they are collected.
>
> If, for reason of control, the university or college, shall not be able to pursue any project for which funds have been appropriated and, allocated under its approved program of expenditures, the Board of Regents/Trustees may authorize the use of said funds

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> for any reasonable purpose which, in its discretion, may be necessary and urgent for the attainment of the objectives and goals of the universities or college[.] (Emphasis supplied)

In the case of *Benguet State University*, the Court applied the statutory construction doctrine of *ejusdem generis* in construing that the power of the governing boards of government educational institutions are not plenary and absolute. Consequently, their power to defray their income is limited to disbursements for programs and projects intended for instruction, research, and extension. The Court interpreted "other programs or projects" as those programs/projects which are of similar nature to academic programs/projects for instruction, research, and extension.

Guided by the pronouncement of the Court in the case of *Castro*, it is clear that the judicial interpretation of Section 4(d) of R.A. No. 8292 in the case of *Benguet State University* must be applied retroactively. Such interpretation did not revisit nor overturn an existing doctrine. Contrary to petitioners' assertion, the ruling of the Court in the *Benguet State University* case retroacts as of the date that R.A. No. 8292 was enacted in 1997.

In fact, such construction was upheld in the 2019 case of *Rotoras v. Commission on Audit*.[23] Therein, the Court identified that the tuition fees and other necessary school charges collected by the government educational institution constitute as special trust fund, which shall be used solely for instruction, research, extension, or other programs or projects of similar nature.

With the retroactive application of the *Benguet State University* case, the grant of the quarterly rice subsidy and the incentives for the *Kalampusan* Award, which are apparently not in line with academic purposes, are beyond the powers of the BOR of CNU. Thus, the issuances of the NDs by the Commission Proper is correct.

However, the liability of the members of the BOR to refund the disallowed amounts must be re-examined.

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[23] G.R. No. 211999, August 20, 2019.

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In the 1998 case of *Blaquera v. Alcala*,[24] the Court exonerated the recipients of the disallowed benefits from the liability of refunding the disallowed amounts in the absence of any showing that they acted in bad faith. The Court maintained that "[t]he officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such benefits."[25]

In line with the ruling in *Blaquera*, the Court likewise applied good faith in releasing the public officers from liability of refunding the disallowed benefits in *De Jesus v. Commission on Audit*[26] and *Querubin v. The Regional Cluster Director*[27] promulgated in 2003 and 2004, respectively.

In both cases, incentives, other than *per diem*, were granted to members of the board of directors of local water districts pursuant to Resolution No. 313, Series of 1995 issued by the Local Water Utilities Administration. These incentives were disallowed by the COA Proper for being contrary to the letter of P.D. No. 198.

Before the resolution of these cases, the Court decided *Baybay Water District v. Commission on Audit*, [28] declaring the illegality of the grant of allowances under Resolution No. 313, Series of 1995 for violating the provisions of P.D. No. 198, which prohibits the receipt of compensation, other *per diems*, by members of the board of directors of local water districts.

In line with *Baybay Water District*, the Court likewise sustained the illegality of the grant of incentives in *De Jesus* and *Querubin*, but absolved the members of the board, who were also the beneficiaries of the same, from returning the amount

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[24] 356 Phil. 678 (1998).

[25] Id.

[26] 451 Phil. 812 (2003).

[27] 477 Phil. 919 (2004).

[28] 425 Phil. 326 (2002).

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received. On this note, the Court observed that at the time of the receipt of these incentives, *Baybay Water District* was still unresolved. Hence, the public officers' honest belief that they were authorized to receive the same was interpreted by the Court as an indication of good faith.

In the 2020 case of *Madera v. Commission on Audit*,[29] the Court settled the rule on the liability of approving officers and recipients. For approving officers, their liability is solidary if they acted in bad faith, malice, or gross negligence under Sections 38, 39, and 43 of the Administrative Code. To be exonerated from liability therefor, such approving officers must demonstrate due diligence, as may be indicated: (1) by Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) by In-house or Department of Justice legal opinion, (3) that there is no precedent allowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality.[30]

On the other hand, recipients are liable to refund, regardless of good faith, on the basis of *solutio indebiti* and unjust enrichment. They, however, may be excused from liability if it is shown that they are entitled to the amount received by reason of services rendered or social justice or humanitarian considerations. They may likewise be excused if undue prejudice will result from requiring the return of the disallowed amount.

On the basis thereof, the Court laid down the Rules on Return in determining the liability of approving officers and recipients:

1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.

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[29] G.R. No. 244128, September 8, 2020.

[30] Id., citing the Reflection of Associate Justice Marvic M.V.F. Leonen, pp. 8 and 13.

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2. If a Notice of Disallowance is upheld, the Rules on Return are as follows:

    a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.

    b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only for the net disallowed amount which, as discussed herein, excludes amounts excused under the following Sections 2c and 2d.

    c. Recipients — whether approving or certifying officers or mere passive recipients — are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.

    d. The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other *bona fide* exceptions as it may determine on a [case-to-case] basis. [31]

In this case, petitioners acted in good faith when they authorized the grant of rice subsidy allowance and the *Kalampusan* Award through the issuance of Board Resolutions in 2003 and 2004. Notably, it was only when the Court decided the case of *Benguet State University* in 2007 that the interpretation of the provisions of Section 4 (d) of R.A. No. 8292 on the authority of the governing board of a government educational institution to disburse its income was settled. Prior to the Court's pronouncement in 2007, petitioners were utterly convinced that the grant of such incentives, relating to the efficiency and productivity of CNU employees, was in accordance with law.

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[31] Id.

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Neither can the payees of such incentives be held liable for the refund. Based on *Madera*, the Court resolves to excuse the return in this case. The disallowed rice subsidy is a reasonable amount of financial assistance which may be excused under No. 2 (d) of the aforementioned Rules on Return, while the *Kalampusan* Award which was granted in consideration of services rendered, and is, thus, likewise excused under No. 2 (d) of the same Rules only on the ground of undue prejudice to payees if the Court require the return of amounts they received 16 years earlier.

Following our pronouncement in *Madera*, the Court holds that the petitioners, as approving officers, and recipients of the rice subsidy allowance and the *Kalampusan* Award are not liable to refund the amount received.

WHEREFORE, the instant Petition is **PARTLY GRANTED**. The Decision dated January 28, 2015 and the Resolution dated January 30, 2018 of the Commission on Audit are **AFFIRMED** with **MODIFICATION** in that petitioners and recipients of the disallowed amounts subject of Notice of Disallowance No. 2004-12-101-(2003) dated September 2, 2005 on the grant of the quarterly rice subsidy allowance and ND Nos. 2004-04-101-(2003) to 2004-10-101-(2003) on the grant of the *Kalampusan* Award are not liable to refund the same.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, and *Gaerlan, JJ.,* concur.

Baltazar-Padilla, J., on sick leave.