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[G.R. No. 217935; May 11, 2021]

METROPOLITAN NAGA WATER DISTRICT, VIRGINIA I. NERO, JEREMIAS P. ABAN, JR., and EMMA A. CUYO, *Petitioners*, *v.* **COMMISSION ON AUDIT,** *Respondent*.

D E C I S I O N

LEONEN, *J.*:

Pursuant to Republic Act No. 6758, or the Salary Standardization Law, allowances, such as the cost of living allowance, are considered integrated into the basic salary. Any disbursement to the contrary shall be disallowed. Good faith of the certifying/approving officers may be appreciated if it can be proven that they acted in the regular performance of official functions, and with the diligence of a good father of the family.

This is a Petition for Review on Certiorari[1] under Rule 64 assailing the Decision[2] and Resolution[3] of the Commission on Audit, which disallowed the payment of accrued Cost of Living Allowance (COLA) from 1992 to 1999, in the total amount of ₱1,428,166.26, to Metropolitan Naga Water District (MNWD) employees.

Presidential Decree No. 985, enacted on August 22, 1976, established the standardization of salaries of government employees, including those employed in government-owned and controlled corporations.[4]

Pursuant to this Act, then President Ferdinand Marcos issued Letter of Implementation No. 97,[5] providing for the

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[1] *Rollo*, pp. 3-18.

[2] Id. at 21-26. The August 25, 2014 Decision was penned by Chairperson Ma. Gracia M. Pulido-Tan, Commissioner Heidi L. Mendoza and Commissioner Jose A. Fabia.

[3] Id. at 27. Unsigned Resolution.

[4] Presidential Decree No. 985 (1976), first Whereas Clause.

[5] Id. at 44-47.

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compensation structure and their respective allowances and benefits, including a COLA of 40% of the basic pay of ₱300.00 per month, whichever was higher, for Local Water Utilities, Local Water Utilities Administration, and Metropolitan Waterworks and Sewerage System employees.[6]

On July 1, 1989, Republic Act No. 6758[7] took effect. The law, among others, consolidated certain allowances and additional compensation into standardized salary rates. Section 12 of the law states:

SECTION 12. *Consolidation of Allowances and Compensation*. - Allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay: allowances of foreign services personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rules herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

The Department of Budget and Management subsequently issued Corporate Compensation Circular No. 10, which discontinued all allowances and fringe benefits granted on top of the basic salary effective November 1, 1989. Paragraph 5.6 of the Circular provides:

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

Due to the issuance of the Circular, the Commission on Audit disallowed the payment of honoraria that had been granted prior to the enactment of Republic Act No. 6758 to employees of the

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[6] Id. at 46.

[7] Entitled "AN ACT PRESCRIBING A REVISED COMPENSATION AND POSITION CLASSIFICATION SYSTEM IN THE GOVERNMENT AND FOR OTHER PURPOSES," August 21, 1989.

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Local Water Utilities Administration. This disallowance was eventually set aside in *De Jesus v. Commission on Audit*,[8] where this Court held the Circular ineffective, as it was implemented without prior publication in the Official Gazette or in a newspaper of general circulation.

Department of Budget and Management Corporate Compensation Circular No. 10 was subsequently published on March 16, 1999.[9]

On August 20, 2002, the Board of Directors of the MNWD approved Board Resolution No. 48, series of 2002.[10] The Board Resolution authorized the payment of approved COLA for the period of 1992 to 1999 to its employees on installment basis. Payments of COLA were made between years 2002 and 2007.[11]

A post-audit was conducted on MNWD's retained earnings as of December 31, 2008. Based on the post-audit, 16 retired or resigned employees were paid a total of ₱1,428,166.26 as of October 31, 2007.[12]

On December 28, 2010, the Supervising Auditor and Audit Team Leader issued Notice of Disallowance No. 10-008-101 (08)[13] disallowing the payment of ₱1,428,166.26 for being contrary to Corporate Compensation Circular No. 10.[14]

On February 9, 2011, the General Manager, on behalf of the MNWD personnel, filed an Appeal Memorandum,[15] praying that the Notice of Disallowance be lifted on the following grounds: (1) according to *Philippine Ports Authority Employees Hired After*

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[8] 355 Phil. 584 (1998) [Per J. Purisima, En Banc].

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

[10] *Rollo*, pp. 28-29.

[11] Id. at 21-22.

[12] Id. at 22.

[13] Id. at 30-31.

[14] Id. at 22.

[15] Id. at 32-40.

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July 1, 1989 v. Commission on Audit, et al.,[16] even those who were not incumbents as of July 1, 1989 were entitled to receive back pay for COLA; (2) the accrued COLA for the period of 1992 to 1999 is a matter of right for MNWD employees; and (3) the disallowance violated the January 10, 2003 Commission on Audit Memorandum issued by Assistant Commissioner Francisco Escarda, Corporate Government Sector, which stated that actions to the request for disallowance and refund should be deferred until a final resolution of the petition.[17]

On August 30, 2012, the Commission on Audit, Officer-in-Charge, Regional Director of Regional Office V rendered a Decision[18] denying the General Manager's Appeal. The Decision held that: (1) the practice of paying COLA should be established, since this was the situation in the *Philippine Ports Authority Employees* case; (2) water districts were not among those enumerated in Letter of Implementation No. 97 as entitled to receive COLA; (3) COLA was already integrated in the standardized salary rates; and (4) pursuant to Commission on Audit Resolution No. 2003-006, payment of COLA was allowed only to incumbents as of July 1, 1989 who were already receiving COLA as of that date.[19]

Aggrieved, MNWD filed a Petition for Review[20] before the Commission on Audit, insisting that retired or resigned employees were entitled to receive back COLA.[21]

On August 15, 2014, the Commission on Audit rendered a Decision[22] denying the Petition for Review. The dispositive portion reads:

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[16] 506 Phil. 382 (2005) [Per Acting C.J. Panganiban, En Banc].

[17] *Rollo*, pp. 35-40.

[18] Id. at 56-63. The Decision was penned by Director III Elwin Gregorio A. Torre.

[19] Id. at 22-23.

[20] Id. at 64-80-A.

[21] Id. at 23.

[22] Id. at 21-26.

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WHEREFORE, the Petition for Review is hereby DENIED for lack of merit. Accordingly, Commission on Audit Regional Office V Decision No. 2012-C-023 dated August 30, 2012 sustaining Notice of Disallowance No. 10-008-101(08) dated December 28, 2010 relative to the payment of accrued Cost of Living Allowance to Metropolitan Naga Water District retired employees in the amount of ₱1,428,166.26 is AFFIRMED.[23]

According to the Commission on Audit, in *Philippine Ports Authority Employees*, COLA benefits were extended to all Philippine Ports Authority employees regardless of their date of hiring because it had previously been granted to employees prior to July 1, 1989. However, it held that MNWD failed to prove that its employees had already been entitled to COLA prior to July 1, 1989 since Letter of Implementation No. 97 did not include the grant of COLA to water district employees.[24]

MNWD filed a Motion for Reconsideration,[25] but it was denied in a March 9, 2015 Resolution.[26] Hence, this Petition[27] was filed.

During the pendency of the Petition, petitioners filed an Urgent Motion for Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction,[28] stating that the Commission on Audit had issued a Notice of Finality of Decision[29] on September 24, 2015 and Order of Execution 2015-247[30] on November 3, 2015 for the payment of the disallowed amount, holding as persons liable the Certifying/Approving Officers Engr. Rey C. Reyes, Emma A. Cuyo, and Belen A. Alma, as well as the payees. Since the issue of disallowance had not yet been resolved by this Court, they pray for the enjoinment of the implementation of ND No. 10-008-101 (08).[31]

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[23] Id. at 25.

[24] Id. at 24-25.

[25] Id. at 81-90.

[26] Id. at 27. Unsigned Resolution.

[27] Id. at 3-18. Comment (*rollo*, pp. 110-137) was filed on September 22, 2015, while Reply (*rollo*, pp. 178-186) was filed on February 27, 2018.

[28] Id. at 151-158.

[29] Id. at 159-160.

[30] Id. at 161-163.

[31] Id. at 155.

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In a Resolution[32] dated January 10, 2018, this Court deferred action on the Urgent Motion and required petitioners to file a reply.

Petitioners argue that the Commission on Audit gravely abused its discretion when it failed to recognize that their entitlement to COLA from 1992 to 1999 was a matter of right pursuant to Letter of Implementation No. 97. They point out that Letter of Implementation No. 97 was issued in 1979, while local water districts were only declared and considered as government-owned and controlled corporations on March 12, 1992 — when the Supreme Court's decision in *Davao City Water District, et al. v. Civil Service Commission*[33] obtained finality. Thus, it was only in 1992 when local water district employees became covered by Letter of Implementation No. 97.[34]

Petitioners invoke the equal protection clause and assert that local water districts provide the same services as those in Letter of Implementation No. 97, specifically the Metropolitan Waterworks and Sewerage System, as they are "both engaged in the operation of water system to provide their respective inhabitants of uninterrupted water needs."[35] They argue that since Metropolitan Waterworks and Sewerage System employees were entitled to COLA, there would be no valid reason why they should not be entitled to the same benefit under the equal protection clause.[36]

Respondent, on the other hand, counters that the text of Letter of Implementation No. 97 does not include local water districts nor did *Davao Water District* declare that local water district employees are covered under Letter of Implementation No. 97, since that case merely held that local water districts are government-owned and controlled corporations under the jurisdiction of the Civil Service Commission and Commission on Audit.[37]

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[32] Id. at 171.

[33] 278 Phil. 605 (1991) [Per J. Medialdea, En Banc].

[34] *Rollo*, pp. 7-10.

[35] Id. at 11.

[36] Id. at 11-12.

[37] Id. at 121-122.

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Respondent points out that petitioner must prove that its employees had been receiving COLA benefits since July 1, 1989 to be entitled to back COLA pay, as required by *Philippine Ports Authority Employees Hired After July 1, 1989 v. Commission on Audit*[38] and *Aquino v. Philippine Ports Authority*.[39] Considering that petitioner had only been declared as a government-owned and controlled corporation in 1992, all additional allowances and benefits are deemed to have been integrated into the basic salary, in accordance with Republic Act No. 6758.[40]

In rebuttal, petitioners point to this Court's ruling in *Metropolitan Naga Water District v. Commission on Audit*,[41] which stated that local water districts were covered by Letter of Implementation No. 97.[42] They insist that even if they were not entitled to back COLA, *Metropolitan Naga Water District* had stated that there was no need to refund the disallowed amounts since there was a showing of good faith when the amounts were received.[43]

The pivotal issue before this Court is whether or not employees of petitioner Metropolitan Naga Water District were entitled to accrued Cost of Living Allowance from 1992 to 1999.

I

The issue of whether MNWD employees are entitled to accrued COLA from 1992 to 1999 has already been conclusively settled in *Metropolitan Naga Water District v. Commission on Audit*.[44]

Metropolitan Naga Water District also dealt with the release of accrued COLA from 1992 to 1999 of several employees pursuant to an August 20, 2002 Resolution by its Board of Directors and

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[38] 506 Phil. 382 (2005) [Per Acting C.J. Panganiban, En Banc].

[39] 709 Phil. 636 (2013) [Per J. Perez, Second Division].

[40] *Rollo*, pp. 123-134.

[41] 782 Phil. 281 (2016) [Per J. Mendoza, En Banc].

[42] *Rollo*, p. 181.

[43] Id. at 183-184.

[44] 782 Phil. 281 (2016) [Per J. Mendoza, En Banc].

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its subsequent disallowance by the Commission on Audit.[45] In resolving the issue, this Court first held that Local Water Districts, such as petitioner, were within the scope of Letter of Implementation No. 97 which states in part:

LETTER OF IMPLEMENTATION NO. 97

AUTHORIZING THE IMPLEMENTATION OF STANDARD COMPENSATION AND POSITION CLASSIFICATION PLANS FOR THE INFRASTRUCTURE/UTILITIES GROUP OF GOVERNMENT OWNED OR CONTROLLED CORPORATIONS

WHEREAS, pursuant to the mandate of the Constitution, P.D. No. 985 was issued to standardized compensation of government officials and employees, including those in government-owned and controlled corporations, taking into account the nature of the responsibilities pertaining to, and the qualifications required for, the positions concerned;

WHEREAS, the said Decree authorizes the adoption of additional financial incentives for viable and profit-making corporations and those performing critical functions, to be supported from net earnings and profits of such corporations;

WHEREAS, for purposes of rationalizing Compensation and Position Classification systems for groups of corporations belonging to the same functional sectoral interests which presently maintain differing compensation and position classification plans, the said Decree and subsequently LOI No. 62, created Compensation Committees to formulate and recommend policies and standards governing classification, compensation, allowances and incentives for such groups or corporations;

WHEREAS, LOI No. 841 directed the Compensation Committees to submit immediately for Presidential approval, adjustments in salary, allowances and fringe benefits as may be called for by present economic conditions for government-owned and controlled corporations;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines by virtue of the powers vested in me by law, do hereby instruct the implementation of the Uniform Position Classification and Pay Plan for the Infrastructure and Utilities group of corporations:

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[45] It is unclear from the records why this case was not consolidated with G.R. No. 218072, considering that, while the assailed COA decisions were different, both cases dealt with essentially the same subject matter and issues.

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1. Scope of the Plan — The Position and Compensation Plans for the Infrastructure and Utilities group shall apply to the corporations in the transport, the power, the infrastructure, and the water utilities sector, as follows:

. . . .

d. Water Utilities
Local Water Utilities
Local Water Utilities Administration
Metropolitan Waterworks and Sewerage System

. . . .

5. Maximum Level Allowances and Benefits — Allowances and benefits may be provided by individual corporations but not to exceed the following schedule, subject to aggregate ceilings indicated in item no. 6 hereof:

a. Cost of living allowance of 40% of basic pay or ₱300 per month whichever is higher[.]

Letter of Implementation No. 97 includes within its scope: (1) local water utilities; (2) the Local Water Utilities Administration; and (3) the Metropolitan Waterworks and Sewerage System. A local water utility is defined as "any district, city, municipality, province, investor-owned public utility or cooperative corporation which owns or operates a water system serving an urban center in the Philippines, except that the said term shall not include the Metropolitan Waterworks and Sewerage System (MWSS) or any system operated by the Bureau of Public Works[.]"[46]

In *Davao City Water District, et al. v. Civil Service Commission*,[47] this Court was confronted with the issue of the proper classification of water districts formed under Presidential Decree No. 198, a law which created the Local Water Utilities Administration and authorized local government units to create their own water districts. The controversy had revolved around whether employees of these local water districts were covered by the Civil Service Commission and the visitorial power of

[46] Presidential Decree No. 198 (1973), Sec. 3 (h).

[47] 278 Phil. 605 (1991) [Per J. Medialdea, En Banc].

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the Commission on Audit, which local water districts argued had jurisdiction only over government-owned and controlled corporations with original charters. Local water districts had argued that they had no original charter, having been created by virtue of local legislation.[48]

This Court clarified that "what ha[d] been excluded from the coverage of the Civil Service Commission are those corporations created pursuant to the Corporation Code."[49] Local water districts were created under Presidential Decree No. 198, and not under the Corporation Code. This Court explained that while "a resolution of a local sanggunian is still necessary for the final creation of a [local water] district," Presidential Decree No. 198 was considered its charter "for it clearly defines the [local water district's] primary purpose and its basic organizational set-up" and "is the very law which gives a water district juridical personality."[50] Thus, this Court concluded that local water districts, being corporations created by a special law, were government-owned and controlled corporations under the jurisdiction of the Civil Service Commission and the Commission on Audit.[51]

It was erroneous for petitioners to presume that they were only considered as government-owned and controlled corporations in 1992, when *Davao City Water Districts* was promulgated. The charter creating local water districts, Presidential Decree No. 198, had been in effect since 1973. Hence, when Letter of Implementation No. 97 was passed in 1976, local water districts had already been part of its coverage.

However, the inclusion of local water districts in the coverage of Letter of Implementation No. 97 does not mean that MNWD employees were entitled to accrued COLA.

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[48] Id. at 606-609.

[49] Id. at 612.

[50] Id. at 615.

[51] Id. at 617.

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II

Prior cases have already established that due to the enactment of Republic Act No. 6758, all allowances, except those expressly mentioned in Section 12, are deemed integrated into the basic salary.

Maritime Industry Authority v. Commission on Audit [52] outlines the concept of integration, as well as the policy behind the law:

> The consolidation of allowances in the standardized salary in Section 12 of Republic Act No. 6758 is a new rule in the Philippine position classification and compensation system. The previous laws on standardization of compensation of government officials and employees do not have this provision.
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> Presidential Decree No. 985, as amended by Presidential Decree No. 1597, the law prior to Republic Act No. 6758, repealed all laws, decrees, executive orders, and other issuances or parts thereof that authorize the grant of allowances of certain positions and employees. Under Presidential Decree No. 985, allowances, honoraria, and other fringe benefits may only be granted to government employees upon approval of the President with the recommendation of the Commissioner of the Budget Commission.
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> Being a new rule, Section 12 of Republic Act No. 6758 raised several questions among government employees. Petitions were filed before this court involving the Commission on Audit's disallowance of the grant of allowances and incentives to government employees. This court already settled the issues and matters raised by petitioner Maritime Industry Authority.
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> The clear policy of Section 12 is "to standardize salary rates among government personnel and do away with multiple allowances and other incentive packages and the resulting differences in compensation among them." Thus, the general rule is that all allowances are deemed included in the standardized salary. However, there are allowances that may be given in addition to the standardized salary. These non-integrated allowances are specifically identified in Section 12, to wit:
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> 1. representation and transportation allowances;
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> 2. clothing and laundry allowances;

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[52] 750 Phil. 288 (2015) [Per J. Leonen, En Banc].

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3. subsistence allowance of marine officers and crew on board government vessels;

4. subsistence allowance of hospital personnel;

5. hazard pay; and

6. allowances of foreign service personnel stationed abroad.

In addition to the non-integrated allowances specified in Section 12, the Department of Budget and Management is delegated the authority to identify other allowances that may be given to government employees in addition to the standardized salary.

Action by the Department of Budget and Management is not required to implement Section 12 integrating allowances into the standardized salary. Rather, an issuance by the Department of Budget and Management is required only if additional non-integrated allowances will be identified. Without this issuance from the Department of Budget and Management, the enumerated non-integrated allowances in Section 12 remain exclusive.[53]

This Court has consistently ruled that the COLA of water district employees is already deemed integrated into the basic salary following the enactment of Republic Act No. 6758. Thus, in *Metropolitan Naga Water District v. Commission on Audit*:[54]

The Court, nevertheless, finds that the back payment of the COLA to MNWD employees was rightfully disallowed. . . .

. . . .

. . . In *Maritime Industry Authority v. COA (MIA)*, the Court explained that, in line with the clear policy of standardization set forth in Section 12 of the SSL, all allowances, including the COLA, were generally deemed integrated in the standardized salary received by government employees, and an action from the DBM was only necessary if additional

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[53] Id. at 313-315 citing Act No. 102 (1901); Commonwealth Act No. 402 (1938); Presidential Decree No. 985 (1976); Presidential Decree No. 1597 (1978); *Ambros v. Commission on Audit*, 501 Phil. 255 (2005) [Per J. Callejo, Sr., En Banc]; Republic Act No. 6758 (1989), Sec. 12; *NAPOCOR Employees Consolidated Union v. National Power Corporation*, 519 Phil. 372 (2006) [Per J. Garcia, En Banc]; and *Gutierrez v. Department of Budget and Management*, 630 Phil. 1 (2010) [Per J. Abad, En Banc].

[54] 782 Phil. 281 (2016) [Per J. Mendoza, En Banc].

non-integrated allowances would be identified. Accordingly, MNWD was without basis in claiming COLA back payments because the same had already been integrated into the salaries received by its employees.[55]

In *Zamboanga City Water District v. Commission on Audit*:[56]

Pursuant to Section 12 of the SSL, employee benefits, save for some exceptions, are deemed integrated into the salary. In *Maritime Industry Authority v. COA (MIA)*, the Court emphasized that the general rule was that all allowances were deemed included in the standardized salary and the issuance of the DBM was required only if additional non-integrated allowances would be identified. In accordance with the *MIA* ruling, the COLA and AA were already deemed integrated in the standardized salary.[57]

In *Balayan Water District v. Commission on Audit*:[58]

[T]he COA did not act with grave abuse of discretion in finding that the COLA back payments were without basis as the said allowance was already integrated in the salary received by BWD employees. There was no accrued COLA to speak of, which requires back payments because upon the effectivity of R.A. No. 6758, all allowances, save for those specifically excluded in Section 12, received by government employees were deemed included in the salaries they received. Considering that the COLA had been considered integrated into the basic salary of government employees, there is no basis for the redundant back payment of the said allowances.[59]

In *Torcuator v. Commission on Audit*:[60]

Verily, the Court has consistently held that Sec. 12 of R.A. No. 6758 is valid and self-executory even without the implementing rules of DBM-CCC No. 10. The said provision clearly states that all allowances and benefits received by government officials and employees are deemed

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[55] Id. at 288-289 citing *Maritime Industry Authority v. Commission on Audit*, 750 Phil. 288 (2015) [Per J. Leonen, En Banc].

[56] 779 Phil. 225 (2016) [Per J. Mendoza, En Banc].

[57] Id. at 242-243 citing *Maritime Industry Authority v. Commission on Audit*, 750 Phil. 288 (2015) [Per J. Leonen, En Banc].

[58] G.R. No. 229780, January 22, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64911> [Per J.C. Reyes, Jr. En Banc].

[59] Id.

[60] G.R. No. 210631, March 12, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65022> [Per J. Gesmundo, En Banc].

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integrated in their salaries. As applied in this case, the COLA, medical, food gift, and rice allowances are deemed integrated in the salaries of the PWD officers and employees. Petitioners could not cite any specific implementing rule, stating that these are non-integrated allowances. Thus, the general rule of integration shall apply.[61]

And finally, in *Gubat Water District v. Commission on Audit*:[62]

Verily, COLA being already deemed integrated in the salaries of GWD employees, they were no longer entitled to another round of COLA.[63]

The integration of the COLA into the standardized salary is consistent with the legislative policy of Section 12 to avoid differences in compensation in the civil service due to additional allowances and incentives given to those in other public institutions, particularly, in government-owned and controlled corporations. In *Gutierrez v. Department of Budget and Management*:[64]

COLA is not in the nature of an allowance intended to reimburse expenses incurred by officials and employees of the government in the performance of their official functions. It is not payment in consideration of the fulfillment of official duty. As defined, cost of living refers to "the level of prices relating to a range of everyday items" or "the cost of purchasing those goods and services which are included in an accepted standard level of consumption." Based on this premise, COLA is a benefit intended to cover increases in the cost of living. Thus, it is and should be integrated into the standardized salary rates.[65]

The confusion, and the numerous similar cases filed before this Court, had been the result of two prior decisions of this Court: *De*

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[61] Id.

[62] G.R. No. 222054, October 1, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66040> [Per J. Lazaro-Javier, En Banc].

[63] Id.

[64] 630 Phil. 1 (2010) [Per J. Abad, En Banc].

[65] Id. at 17 citing *Bureau of Fisheries and Aquatic Resources Employees Union, Regional Office No. VII, Cebu City v. Commission on Audit*, 584 Phil. 132 (2008) [Per C.J. Puno, En Banc]; The New Oxford American Dictionary, OXFORD UNIVERSITY PRESS (2005 ed.); and Webster's Third New International Dictionary, MERRIAM-WEBSTER, INC., (1993 ed.).

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Jesus v. Commission on Audit[66] and *Philippine Ports Authority Employees Hired After July 1, 1989 v. Commission on Audit*.[67]

De Jesus held that Department of Budget and Management Corporate Compensation Circular No. 10, which integrated allowances such as the COLA into the standardized salaries, was ineffective for having been implemented without prior publication. When the Circular was eventually published on March 16, 1999,[68] there was a question on whether allowances, such as the COLA, were deemed integrated in the period between July 1, 1989 and March 16, 1999.

In *Philippine Ports Authority Employees Hired After July 1, 1989*, this Court conceded that there was a "legal limbo" between this period and, thus, employees were still entitled to receive the same allowances, including the COLA, which they had been receiving prior to July 1, 1989. However, due to the equal protection clause, and considering that employees hired after July 1, 1989 had been similarly situated as those hired prior to, this Court held that "[a]ll — not only incumbents as of July 1, 1989 — should be allowed to receive back pay corresponding to the said benefits, from July 1, 1989 to the new effectivity date of DBM-CCC No. 10 — March 16, 1999."[69]

This, in turn, gave public officers and employees the impression that all employees, whether or not they had already been employed in government prior to July 1, 1989, were entitled to accrued allowances like COLA from July 1, 1989 to March 16, 1999 as a matter of right.

This confusion was eventually settled in *Republic v. Hon. Cortez, Jr.*,[70] where this Court held:

In order to settle any confusion, we abandon any other interpretation of our ruling in *Philippine Ports Authority (PPA) Employees hired After*

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[66] 355 Phil. 584 (1998) [Per J. Purisima, En Banc].

[67] 506 Phil. 382 (2005) [Per Acting C.J. Panganiban, En Banc].

[68] Id.

[69] Id. at 391.

[70] 805 Phil. 294 (2017) [Per J. Leonen, En Banc].

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July 1, 1989 with regard to the entitlement of the NAPOCOR officers and employees to the back payment of COLA and AA during the period of legal limbo. To grant any back payment of COLA and AA despite their factual integration into the standardized salary would cause salary distortions in the Civil Service. It would also provide unequal protection to those employees whose COLA and AA were proven to have been factually discontinued from the period of Republic Act No. 6758's effectivity.

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

Furthermore, *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989* only applies if the compensation package of those hired before the effectivity of Republic Act No. 6758 actually decreased; or in the case of those hired after, if they received a lesser compensation package as a result of the deduction of COLA or AA.[71] (Citations omitted)

Thus, for *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989* to apply, petitioner must first prove that: (1) employees were paid COLA on top of their salaries but the practice was discontinued due to Department of Budget and Management Corporate Compensation Circular No. 10; and (2) those hired before July 1, 1989 would suffer a diminution of pay, or in the case of those hired after, would receive a lesser compensation package as a result of the deduction.

As found by the Commission on Audit, petitioner failed to establish that there had already been a practice of COLA payment on top of the standardized salary that had been discontinued. On the contrary, petitioner only granted accrued COLA from 1992 to 1999 on the mistaken presumption that it was covered by the ruling in *De Jesus*. However, prior to *De Jesus*, there was no indication or evidence that petitioner's employees were receiving COLA *in addition* to their standardized salaries.

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[71] Id. at 338-339.

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Thus, petitioner's employees were not entitled to any supposed accrued COLA from 1992 to 1999. These allowances, therefore, were correctly disallowed by the Commission on Audit.

III

For every finding of disallowance, a question arises as to whether these employees should be made to return the disallowed amounts. In Notice of Disallowance (ND) 10-008-101 (08),[72] Certifying/Approving Officers Eng. Rey C. Reyes, Emma A. Cuyo, and Belen A. Alma, and the payees[73] were held liable to return the disallowed amounts.

Under the Administrative Code, illegal expenditures of public funds shall be the solidary liability of "every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment":

> SECTION 43. Liability for Illegal Expenditures. — Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.[74]

This Court has held, however, that "[b]y way of exception, . . . passive recipients or payees of disallowed salaries, emoluments, benefits, and other allowances need not refund such disallowed amounts if they received the same in good faith[.]"[75] Applying this

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[72] *Rollo*, p. 30.

[73] Id. at 53. The payees were Vicente S. Azul, Andres T. Bajar, Rogelio I. Enciso, Julito D. Baylon, Alfredo P. Bodeno, Alicia R. Borja, Fructuso O. Garcera, Apolinario O. Igane, Cesar A. Mongaoang, Domingo F. Orante, Isidro B. Orobia, Fructoso B. Padayao, Honesto P. Paladin, Jeb D. Proxidio, Jr., Delfin P. Raquitico, and Victor A. Villare.

[74] ADM. CODE, Book VI, Ch. 5, Sec. 43.

[75] *Silang v. Commission on Audit*, 769 Phil. 327, 346 (2015) [Per J. Perlas-Bernabe, En Banc] citing *Mendoza v. Commission on Audit*, 717 Phil. 491 (2013) [Per J. Leonen, En Banc]; *Agra v. Commission on Audit*, 677 Phil. 608 (2011); *Veloso v. Commission on Audit*, 672 Phil. 419 (2011) [Per J. Leonardo-de

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doctrine would mean that the payees of the disallowed COLA are absolved, since they were mere passive recipients. This had been the ruling in *Metropolitan Naga Water District v. Commission on Audit*:[76]

> MNWD employees need not refund the amounts corresponding to the COLA they received. They had no participation in the approval thereof and were mere passive recipients without knowledge of any irregularity. Hence, good faith should be appreciated in their favor for receiving benefits to which they thought they were entitled.[77]

However, *Madera v. Commission on Audit*[78] observed that the "good faith" doctrine might have an unjust application on the part of the approving and/or certifying officers, who would now be left to answer for the entire amount:

> The history of the rule as shown evinces that the original formulation of the "good faith rule" excusing the return by payees based on good faith was not intended to be at the expense of approving and/or certifying officers. The application of this judge made rule of excusing the payees and then placing upon the officers the responsibility to refund amounts they did not personally receive, commits an inadvertent injustice.[79]

Castro, En Banc]; *Singson v. Commission on Audit*, 641 Phil. 154 (2010) [Per J. Peralta, En Banc]; *Lumayna v. Commission on Audit*, 616 Phil. 929 (2009) [Per J. Del Castillo, En Banc]; *Bases Conversion and Development Authority v. Commission on Audit*, 599 Phil. 455 (2009); *Barbo v. Commission on Audit*, 589 Phil. 289 (2008); *Magno v. Commission on Audit*, 558 Phil. 76 (2007) [Per J. Carpio, En Banc]; *Benguet State University v. Commission on Audit*, 551 Phil. 878 (2007) [Per J. Nachura, En Banc]; *Public Estates Authority v. Commission on Audit*, 541 Phil. 412 (2007) [Per J. Sandoval-Gutierrez, En Banc]; *Abanilla v. Commission on Audit*, 505 Phil. 202 (2005) [Per J. Sandoval-Gutierrez, En Banc]; *Home Development Mutual Fund v. Commission on Audit*, 483 Phil. 666 (2004) [Per J. Carpio, En Banc]; *Kapisanan ng mga Manggagawa sa Government Service Insurance System v. Commission on Audit*, 480 Phil. 861 (2004) [Per J. Tinga, En Banc]; and *Blaquera v. Alcala*, 356 Phil. 678 (1998) [Per J. Purisima, En Banc].

[76] 782 Phil. 281 (2016) [Per J. Mendoza, En Banc].

[77] Id. at 291 citing *Silang v. Commission on Audit*, 769 Phil. 327 (2015) [Per J. Perlas-Bernabe, En Banc].

[78] G.R. No. 244128, September 8, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66435> [Per J. Caguioa, En Banc].

[79] Id.

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In order to address this inequity, *Madera* included approving and/or certifying officers within the application of the "good faith doctrine" and formulated the rules on return of disallowed amounts:

> In view of the foregoing discussion, the Court pronounces:
>
> 1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.
>
> 2. If a Notice of Disallowance is upheld, the rules on return are as follows:
>
> a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.
>
> b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following Sections 2c and 2d.
>
> c. Recipients — whether approving or certifying officers or mere passive recipients — are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.
>
> d. The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other *bona fide* exceptions as it may determine on a case to case basis.
>
> Undoubtedly, . . . the ultimate analysis of each case would still depend on the facts presented, and these rules are meant only to harmonize the previous conflicting rulings by the Court as regards the return of disallowed amounts — after the determination of the good faith of the parties based on the unique facts obtaining in a specific case has been made.[80]

Further, in determining whether a certifying and/or authorizing officer exercised the diligence of a good father of a family, the following circumstances or badges may be considered:

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[80] Id.

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(1) Certificate of Availability of Funds pursuant to Section 40 of the Administrative Code;

(2) In-house or Department of Justice legal opinion;

(3) that there is no precedent disallowing a similar case in jurisprudence;

(4) that it is traditionally practiced within the agency and no prior disallowance has been issued, and

(5) with regard the question of law, that there is a reasonable textual interpretation on its legality.[81]

Abellanosa v. Commission on Audit[82] further clarifies the Madera Rules on the interpretation of Rule 2 (c):

As a supplement to the Madera Rules on Return, the Court now finds it fitting to clarify that in order to fall under Rule 2c, i.e., amounts genuinely given in consideration of services rendered, the following requisites must concur:

(a) the personnel incentive or benefit has proper basis in law but is only disallowed due to irregularities that are merely procedural in nature; and

(b) the personnel incentive or benefit must have a clear, direct, and reasonable connection to the actual performance of the payee-recipient's official work and functions for which the benefit or incentive was intended as further compensation.

Verily, these refined parameters are meant to prevent the indiscriminate and loose invocation of Rule 2c of the Madera Rules on Return which may virtually result in the practical inability of the government to recover. To stress, Rule 2c as well as Rule 2d should remain true to their nature as exceptional scenarios; they should not be haphazardly applied as an excuse for non-return, else they effectively override the general rule which, again, is to return disallowed public expenditures.[83]

Applying these rules to this case, the "good faith" rule may extend to the certifying and/or approving officers who approved the payment

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[81] J. Leonen, Separate Concurring Opinion in *Madera v. Commission on Audit*, G.R. No. 244128, September 8, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66435> [Per J. Caguioa, En Banc].

[82] G.R. No. 185806, November 17, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66732> [Per J. Perlas-Bernabe, En Banc].

[83] Id.

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of supposed accrued COLA for 1992 to 1999. Consideration must be made to the circumstance that the payment was due to petitioner's mistaken interpretation of Republic Act No. 6758, Section 12 — a mistake that, as can be seen from numerous prior cases, was made by many other government agencies. It must also be noted that at the time this case was filed, there was yet no definitive ruling on the confusion created by *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989*. This had been the observation in *Metropolitan Naga Water District v. Commission on Audit*:[84]

> Further, good faith may also be appreciated in favor of the MNWD officers who approved the same. They merely acted in accordance with the resolution passed by the Board authorizing the back payment of COLA to the employees. Moreover, at the time the disbursements were made, no ruling similar to MIA was yet made declaring that the COLA was deemed automatically integrated into the salary notwithstanding the absence of a DBM issuance. In *Mendoza v. COA*, the Court considered the same circumstances as badges of good faith.[85]

This Court likewise arrived at the same conclusion in *Zamboanga City Water District v. Commission on Audit*:[86]

> [T]he back payment of the COLA and AA need not be refunded because at the time they were paid, there was no similar ruling like the *MIA* case, where it was held that integration was the general rule and, therefore, benefits were deemed integrated notwithstanding the absence of a DBM issuance. Prior to *MIA*, there had been no categorical pronouncement that, by virtue of Section 12 of the SSL, benefits were deemed integrated, without a need of a subsequent issuance from the DBM. Consequently, the officers who authorized the back payment of the COLA and AA and the employees who received them believing to be entitled thereto need not refund the same. They were in good faith as they were oblivious that the said payments were improper.[87]

Similarly, in *Torcuator v. Commission on Audit*:[88]

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[84] 782 Phil. 281 (2016) [Per J. Mendoza, En Banc].

[85] Id. at 291 citing *Mendoza v. Commission on Audit*, 717 Phil. 491 (2013) [Per J. Leonen, En Banc].

[86] 779 Phil. 225 (2016) [Per J. Mendoza, En Banc].

[87] Id. at 250.

[88] G.R. No. 210631, March 12, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65022> [Per J. Gesmundo, En Banc].

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[G]ood faith may be appreciated in favor of petitioners because at the time that they made the disallowed disbursement of COLA, medical, food gift, and rice allowances, there was still no definitive ruling or jurisprudence regarding the inclusion of these benefits; they merely relied on the DBM letters in good faith; and jurisprudence had consistently held that good faith may be appreciated to the government officers and employees that approved and received the disallowed benefits.

In conclusion, it is unfair to penalize public officials based on overly stretched and strained interpretations of rules, which were not that readily capable of being understood at the time such functionaries acted in good faith. If there is any ambiguity, which is actually clarified years later, then it should only be applied prospectively. A contrary rule would be counterproductive. It could result in paralysis, or lack of innovative ideas getting tried. In addition, it could dissuade others from joining the government. When government service becomes unattractive, it could only have adverse consequences for society.[89]

On October 26, 2005, the Department of Budget and Management issued Circular No. 2005-002, pertinent portions of which read:

1.0 This Circular is being issued as a clarification on the impact of the latest Supreme Court rulings on the integration of allowances, including Cost of Living Allowance (COLA), of government employees under Republic Act (RA) No. 6758.

. . . .

5.0 In view of the foregoing, payment of allowances and other benefits, such as COLA, which are already integrated in the basic salary, remains prohibited unless otherwise provided by law or ruled by the Supreme Court.

6.0 All agency heads and other responsible officials and employees found to have authorized the grant of COLA and other allowances and benefits already integrated in the basic salary shall be personally held liable for such payment, and shall be severely dealt with in accordance with applicable administrative and penal laws.[90]

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[89] Id. at 211-212 citing *PEZA v. Commission on Audit*, 797 Phil. 117, 142 (2016) [Per J. Peralta, En Banc].

[90] *See Balayan Water District v. Commission on Audit*, G.R. No. 229780, January 22, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64911> [Per J. Reyes, Jr., En Banc].

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In *Balayan Water District v. Commission on Audit*,[91] the rule on good faith was found to be inapplicable since the grant of accrued COLA had occurred after the Department of Budget and Management issued Circular No. 2005-002:

> [U]nlike in *MNWD*, at the time the BWD passed a resolution for the release of COLA back payments, DBM NB Circular No. 2005-502 was valid and existing. Petitioners should not simply brush aside the said issuance as an obscure circular as it unequivocally and categorically prohibited the payment of COLA unless there is a law, or a ruling by this Court, allowing or authorizing the release of COLA. Good faith cannot be appreciated in favor of the responsible officers of BWD because at the time of the approval of the disallowed disbursement, there was a clear and straightforward proscription on the payment of COLA. DBM NB Circular No. 2005-502 should have put them on guard and be more circumspect in allowing the disbursement.[92]

Thus, *Gubat Water District v. Commission on Audit*[93] clarified that for good faith to apply to the approving/certifying officers, it must have been granted prior to the issuance and effectivity of Circular No. 2005-002:

> The employees and officers of GWD, however, should be absolved from returning the COLA differentials in question because the same were granted prior to the issuance and effectivity of DBM NB Circular No. 2005-502, which clarified that "payment of allowances and other benefits such as COLA which are already integrated in the basic salary remains prohibited unless otherwise provided by law or ruled by the Supreme Court."[94]

Since the disallowed amounts in this case were granted in 2002, or prior to the issuance of Department of Budget and Management Circular No. 2005-002, and taking into account that there was yet no definitive ruling on the alleged entitlement to COLA of petitioner's employees when the COLA was released,

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[91] Id.

[92] Id.

[93] G.R. No. 222054, October 1, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66040> [Per J. Lazaro-Javier, En Banc].

[94] Id.

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the certifying/approving officers may be considered to have been in good faith when they disbursed the amounts that were later disallowed.

The payees, however, as passive recipients, may not similarly be absolved on the same grounds. In *Madera v. Commission on Audit*:[95]

> Verily, excusing payees from return on the basis of good faith has been previously recognized as an exception to the laws on liability for unlawful expenditures. However, being civil in nature, the liability of officers and payees for unlawful expenditures provided in the Administrative Code of 1987 will have to be consistent with civil law principles such as *solutio indebiti* and unjust enrichment. These civil law principles support the propositions that (1) the good faith of payees is not determinative of their liability to return; and (2) when the Court excuses payees on the basis of good faith or lack of participation, it amounts to a remission of an obligation at the expense of the government.
>
> To be sure, the application of the principles of unjust enrichment and *solutio indebiti* in disallowed benefits cases does not contravene the law on the general liability for unlawful expenditures. In fact, these principles are consistently applied in government infrastructure or procurement cases which recognize that a payee contractor or approving and/or certifying officers cannot be made to shoulder the cost of a correctly disallowed transaction when it will unjustly enrich the government and the public who accepted the benefits of the project.
>
> . . . .
>
> With the liability for unlawful expenditures properly understood, payees who receive undue payment, regardless of good faith, are liable for the return of the amounts they received. Notably, in situations where officers are covered by Section 38 of the Administrative Code of 1987 either by presumption or by proof of having acted in good faith, in the regular performance of their official duties, and with the diligence of a good father of a family, payees remain liable for the disallowed amount unless the Court excuses the return. For the same reason, any amounts allowed to be retained by payees shall reduce the solidary liability of officers found to have acted in bad faith, malice, and gross negligence.[96] (Citation omitted)

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[95] G.R. No. 244128, September 8, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66435> [Per J. Caguioa, En Banc].

[96] Id.

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Payees are excused from returning the disallowed amounts if "they are able to show that the amounts they received were genuinely given in consideration of services rendered," under Rule 2(c) of the Madera Rules. *Abellanosa* further refines the definition in that the allowances must "have proper basis in law" and "must have a clear, direct, and reasonable connection to the actual performance of the payee-recipient's official work and functions."[97]

Neither of these circumstances is present in this case. There was no basis in law since the payment of COLA was the result of a mistaken interpretation of this Court's prior decisions. COLA is likewise "not in the nature of an allowance intended to reimburse expenses incurred by officials and employees of the government in the performance of their official functions."[98] Hence, the payees cannot be excused from returning the disallowed amounts under Rule 2(c).

However, under Rule 2(d) payees may be excused "based on undue prejudice, social justice considerations, and other bona fide exceptions as it may determine on a case to case basis."[99]

Here, payment of the disallowed amounts was completed as of October 31, 2007.[100] Notice of Disallowance No. 10-008-101(08) was issued only on December 28, 2010,[101] or more than three years after the payees received the amounts. Considering the protracted amount of time between the release and the disallowance, the payees would have already spent these amounts in good faith, believing that they were entitled to it. The payees in this case have also

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[97] *Abellanosa v. Commission on Audit*, G.R. No. 185806, November 17, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66732> [Per J. Perlas-Bernabe, En Banc].

[98] *Gutierrez v. Department of Budget and Management*, 630 Phil. 1 (2010) [Per J. Abad, En Banc].

[99] *Madera v. Commission on Audit*, G.R. No. 244128, September 8, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66435> [Per J.Caguioa, En Banc].

[100] *Rollo*, p. 22.

[101] Id. at 30-31.

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either already retired or have resigned from service by the time the payments were completed. Requiring them to return the amounts despite the length of time between the release and the disallowance would be considered undue prejudice under Rule 2(d).

Thus, in this instance, the payees may be absolved from returning the disallowed amounts, in view of the undue prejudice which may be caused by their return.

WHEREFORE, the Petition is **DISMISSED**. The August 15, 2014 Decision and March 9, 2015 Resolution of the Commission on Audit are **AFFIRMED** with **MODIFICATION** in that Certifying/Approving Officers Engr. Rey C. Reyes, Emma A. Cuyo, and Belen A. Alma, and the payees[102] are **ABSOLVED** from refunding the amount of ₱1,428,166.26 in Notice of Disallowance (ND) 10-008-101(08).

SO ORDERED.

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

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioners.
The Solicitor General for respondent.

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[102] *Rollo*, p. 53. The payees were Vicente S. Azul, Andres T. Bajar, Rogelio I. Enciso, Julito D. Baylon, Alfredo P. Bodeno, Alicia R. Borja, Fructuso O. Garcera, Apolinario O. Igane, Cesar A. Mongaoang, Domingo F. Orante, Isidro B. Orobia, Fructoso B. Padayao, Honesto P. Paladin, Jeb D. Proxidio, Jr., Delfin P. Raquitico, and Victor A. Villare.