Republic of the Philippines
Supreme Court
Manila

EN BANC

PROVINCE OF CAMARINES SUR, represented by GOVERNOR MIGUEL LUIS R. VILLAFUERTE,
Petitioner,

- versus -

THE COMMISSION ON AUDIT,
Respondent.

G.R. No. 227926

Present:

PERALTA, *C.J.*,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
REYES, A. JR.,
GESMUNDO,
REYES, J. JR.,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ,
DELOS SANTOS, and
GAERLAN, *JJ.*

Promulgated:

March 10, 2020

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DECISION

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

The Facts and the Case

Before the Court is a Petition for *Certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court seeking to nullify and set aside the

December 29, 2014 Decision[1] and the September 26, 2016 Resolution[2] of respondent Commission on Audit (COA). The assailed Resolution denied the motion for reconsideration filed by petitioner Province of Camarines Sur, represented by Governor Miguel Luis R. Villafuerte (Gov. Villafuerte), for lack of merit, and affirmed with finality COA Regional Office V (COA-RO V) Decision No. 2013-L-016[3] which sustained the validity of Notice of Disallowance No. 2011-200-010(08)[4] on the payment of allowances to locally funded teaching and non-teaching personnel of the Department of Education (DepEd)-Division of Camarines Sur in the total amount of ₱5,820,843.30.

To accommodate the growing number of enrollees in public schools, petitioner started hiring in 1999 temporary teaching personnel to handle extension classes of existing public schools, as well as non-teaching personnel in connection with the establishment and maintenance of these extension classes. The salaries of the personnel hired were charged to the Special Education Fund (SEF).[5]

On March 5, 2009, Atty. Eleanor V. Echano, Audit Team Leader (ATL) assigned to the province of Camarines Sur issued Audit Observation Memorandum (AOM) No. 2009-19 (2008) dated February 18, 2009 stating that the payments made by the petitioner for the allowances/honoraria of locally funded teaching and non-teaching personnel of the DepEd-Division of Camarines Sur from July 2008 to October 2008 in the total amount of ₱5,820,843.30 that were charged to the SEF contravene the provisions of Section 272 of Republic Act (R.A.) No. 7160 or The Local Government Code of 1991 (LGC) and the Department of Education, Culture and Sports, Department of Budget and Management, and Department of Interior and Local Government Joint Circular (DECS-DBM-DILG JC) No. 1, Series of 1998 dated April 15, 1998 on the utilization of the SEF for the operation and maintenance of elementary and secondary public schools.[6]

In their Comment dated June 23, 2010 to the AOM, the Officer-In-Charge (OIC)-Provincial Accountant; OIC-Provincial Treasurer and OIC-Provincial Budget Officer of the petitioner contended that the payments made did not violate Section 272 of the LGC and other pertinent circulars as the payments were well within the purpose and intent for which the SEF may be utilized.[7]

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1 *Rollo*, pp. 23-25.
2 Id. at 26-36.
3 Id. at 51-55.
4 Id. at 37-38.
5 Id. at 6, 156.
6 Id. at 7, 37.
7 Id. at 7, 101.

On December 23, 2011, the ATL and Supervising Auditor-in-Charge issued Notice of Disallowance No. 2011-200-010(08)[8] dated November 15, 2011 disallowing the payments of allowances/honoraria to locally funded teaching and non-teaching personnel of DepEd-Division of Camarines Sur which were charged to the 2008 SEF for the following violations:

1. The payments for the allowances of locally funded teachers were in violation of the provisions of Section 272 of RA 7160 which explicitly provide that the proceeds of Special Education Fund shall be allocated for the operation and maintenance of public schools and DECS-DBM-DILG Joint Circular No. 01 s of 1998 dated April 14, 1998, clarified under JC No. 01-A dated March 14, 2000 and JC No. 01-B dated June 25, 2001 which state that payments of salaries, authorized allowances and personnel-related benefits are only for hired teachers that handle new classes as extension of existing public elementary [or] secondary schools established and approved by DepEd;

2. The allowances was taken up in the Special Education Fund (SEF) books as "Donations" (878) instead of taking it up to the General Fund books[;]

3. No Memorandum of Agreement and Accomplishment Report attached[;]

4. The payments of payrolls on JEV Nos. 200-08-10-185(1-5) and 200-08-10-188 were not approved by the Provincial Governor[;]

5. The Journal Entry of Payrolls on JEV Nos. 200-08-09-165(12), 200-08-185(1-5) and 200-08-10-188 were not approved by the Provincial Accountant[;]

6. The OBR on JEV No. 200-08-09-165(12) was not approved by the Provincial Budget Officer (PBO)[;]

7. There were no certifications coming from the Head Teachers that the rec[i]pient-teacher indeed served in a particular school at a given time[;]

8. There was no certification from the HRMO of the [p]rovince regarding the authenticity of each claim.[9]

Under the said Notice of Disallowance, the following persons were found liable for the disbursements:

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8 Supra note 4.

9 *Rollo*, p. 37.

Name	Position/Designation	Nature of Participation in the Transaction
Nora Cariño	OIC-HRMO	For approving the transaction
Lizerna Molave, Ma. Teresa Genova, Ruby Estefani	Provincial Accountant	For certifying that the supporting documents are complete
Susan Laquindanum	Assistant Provincial HRMO	For certifying that charges to appropriation/allotment were necessary, lawful and under your direct supervision and that supporting documents were valid, proper and legal.[10]

On June 19, 2012, petitioner, through the Provincial Legal Officer, appealed the Notice of Disallowance to the Office of the Regional Director of COA-RO5 insisting that the payments of allowances and honoraria to locally funded teaching and non-teaching personnel were properly charged to the SEF in light of the pronouncement of the Court in *Commission on Audit v. Province of Cebu*[11] and that the locally funded teachers actually rendered their services for calendar year 2008 as certified to by the Provincial Human Resource Management Officer (PHRMO) and the Schools Division Superintendent (SDS) of Camarines Sur.[12]

In their Answer dated July 11, 2012, the ATL and the Supervising Auditor (SA) maintained that the payments of allowances/honoraria to locally funded teachers were rightfully disallowed for failure to comply with the mandatory requirements of law and joint circulars on the utilization of SEF, particularly the establishment of extension classes wherein the approval of the DECS Secretary, upon the recommendation of the DECS Regional Director is necessary, as well as the certification of the division superintendent concerned of the necessity or urgency of establishing such extension classes.[13]

Furthermore, the ATL and SA averred that the province failed to submit certifications of school heads/head teachers attesting to the actual periods of the services rendered by the personnel in their respective schools.. While they agree with the provincial legal officer's contention that payments of salaries, allowances and personnel-related benefits of public school teachers are authorized expenditures of the SEF as enunciated in *COA v. Province of Cebu*, they noted that there were also mandatory requirements that should be complied with before a lawful disbursement of the SEF may be made, which the province failed to submit.[14]

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10 Id.
11 422 Phil. 519 (2001).
12 *Rollo*, pp. 42-50.
13 Id. at 28-29.
14 Id. at 29.

On July 29, 2013, COA-RO5 rendered Decision No. 2013-L-016[15] denying the appeal and affirming the subject disallowance on the ground that DepEd-Division of Camarines Sur did not comply with the mandatory conditions for the establishment of extension classes before the payment of allowances/honoraria to locally funded teachers hired to handle extension classes could be validly charged to the SEF pursuant to Section 2.1 of DECS-DBM-DILG JC No. 01-A dated March 14, 2000 and Section 2.1 of DECS-DBM-DILG JC No. 01-B dated June 25, 2001. COA-RO5 also ruled that the payment of allowances to non-teaching personnel violated Section 272 of the LGC and DECS-DBM-DILG JC Nos. 01, 01-A and 01-B because only salaries and allowances of public school teachers who handle extension classes are chargeable to the SEF.

Not accepting defeat, petitioner elevated the matter before respondent COA proper (COA) *via* a petition for review. However, the petition was denied by the COA in Decision No. 2014-454[16] dated December 29, 2014 for being filed out of time. Petitioner moved for reconsideration.

In its Resolution,[17] docketed as Decision No. 2016-268 and dated September 26, 2016, the COA found the petition for review to have been timely filed but resolved to deny the motion for reconsideration for lack of merit. The dispositive portion of the Resolution reads:

> WHEREFORE, premises considered, the motion for reconsideration is hereby DENIED for lack of merit. Accordingly, Commission on Audit Regional Office V Decision No. 2013-L-016 dated July 29, 2013 sustaining the Notice of Disallowance No. 2011-200-010 (08) dated November 15, 2011, on the payment of allowances/honoraria to locally hired temporary teachers and personnel of the Department of Education-Division of Camarines Sur in the total amount of P5,820,843.30, is AFFIRMED with FINALITY.[18]

In finding the disallowance of the subject allowances/honoraria to be proper, the COA gave the same reasons as the COA-RO V when it affirmed the subject Notice of Disallowance. It held:

> The afore-quoted DECS-DBM-DILG JCs provide that the salaries and allowances of teachers hired to handle extension classes are among the priority expenses chargeable to SEF. In this regard, such extension classes should be approved by the DECS (now DepEd) secretary upon the recommendation of the DepEd regional director and certified by the division superintendent as to the necessity and urgency of establishing extension classes in the LGUs and the number of pupils/students therein shall at least be 15.

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15 Supra note 3.
16 Supra note 1.
17 Supra note 2
18 *Rollo*, p. 35.

> This Commission finds nothing in the records that the mandatory requirements for the establishment of extension classes were complied with, much less, were the teachers hired for the purpose of handling extension classes. Only the certification dated November 5, 2009 issued by Schools Division Superintendent Emma I. Cornejo attesting to the necessity and urgency of establishing extension classes in the elementary was presented.
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> With respect to the payment of allowances to the non-teaching personnel employed in the extension classes established by the DepEd-Division of Camarines Sur, the same is irregular since in the DECS-DBM-DILG JC No. 01-B dated June 25, 2001, only the salaries and authorized allowances of teachers hired to handle extension classes are chargeable against the SEF.[19]

Undaunted, petitioner is now before this Court *via* the present Petition for *Certiorari*.

The Issues Presented

Petitioner raised the following issues for this Court's consideration:

> A.
> THE COA ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT FAILED TO CONSIDER PETITIONER'S COMPLIANCE WITH THE LOCAL GOVERNMENT CODE.
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> B.
> THE COA ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT FAILED TO CONSIDER THAT THE APPROVAL, RECOMMENDATION, AND CERTIFICATION REQUIREMENTS IN THE DECS-DBM-DILG JOINT CIRCULAR NO. 01-A CONSTITUTES AN INVALID EXERCISE OF THE ADMINISTRATIVE RULE-MAKING POWER, AND VIOLATES THE PRINCIPLE OF LOCAL AUTONOMY GRANTED TO LGUs BY THE LOCAL GOVERNMENT CODE.
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> C.
> THE COA ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT FAILED TO CONSIDER THAT THE JOINT CERTIFICATION BY THE ACTING HRMO AND SCHOOLS DIVISION SUPERINTENDENT SUFFICIENTLY MET THE CERTIFICATION REQUIREMENTS STATED IN THE AOM AND THE ND.[20]

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19 Id. at 34.
20 Id. at 12.

The Arguments of the Parties

Petitioner contended that the COA acted in an oppressive, whimsical, capricious and arbitrary manner when, in 2009, it suddenly assailed the hiring of temporary personnel to teach and handle extension classes, and the giving of allowances to them when it did not question the same for almost a decade, or from 1999 to 2008.[21] At any rate, it insisted that it complied with all the requirements laid down by the LGC before it utilized the SEF for the payment of the allowances and honoraria of locally-funded teaching and non-teaching personnel. Consonant with Sections 100, 235, 272 of the LGC, the High Court, in *COA v. Province of Cebu*, ruled that SEF may be used to answer for the compensation of teachers handling extension classes. While the decision therein is silent as to whether the SEF may be used for the salaries of non-teaching personnel, its silence must not be taken to mean that the Local Government Units (LGUs), like the petitioner, through the Local School Board (LSB), has no discretion to decide on how its budget may be utilized. The power to use the SEF for the operation and maintenance of public schools necessarily implies that it may be used for the payment of salaries of non-teaching personnel applying the doctrine of necessary implication inasmuch as non-teaching personnel are as necessary and as indispensable to the operation and maintenance of public schools and the establishment of and handling of extension classes as the teaching personnel. To say that an LGU has the power to use its funds to pay for the salaries of teachers hired to handle extension classes and at the same time say that it has no power to pay for the salary of extra non-teaching personnel hired due to the increase in the number of classes will result in absurdity.[22]

Petitioner also asseverated that DECS-DBM-DILG JC No. 01-A which was made the basis of the AOM and ND is null and void for being an invalid exercise of the rule-making power of the DepEd, DBM and DILG. Before the issuance of the said circular, the LGC has long authorized the use of SEF, and has in fact mandated the LSB to prioritize the maintenance and operation of extension classes in the elementary and secondary public schools when needed. For another, the authority granted to the LSB to decide how the SEF should be allocated for the operation and maintenance of extension classes under Section 100 of the LGC did not come with a condition. For the departments of the national government to require compliance to certain conditions, such as administrative approval, recommendation and certification, when the law itself did not require the same amounted to an invalid exercise of administrative rule-making authority. Such requirement is also a violation of the principle of local autonomy guaranteed by the LGC to the LGUs because it unduly interferes with the policy judgment of the petitioner for it gives the national government agencies the power to substitute their judgment for that of the

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21 Id. at 156-157.
22 Id. at 13-14.

LGUs.[23] Petitioner added that consistent with the fundamental precept of checks and balances, the Court has the power to pass upon the validity of the subject joint circular.[24]

Furthermore, petitioner averred that the joint certification issued by petitioner's acting PHRMO and SDS which attested to the authenticity of the claims of the locally-funded teachers sufficiently addressed the deficiency noted by the AOM and ND as to the lack of certification by the Provincial HRMO regarding authenticity of the claim. The joint certification must also be considered to have met the certification requirements stated in the AOM and ND given that it did not only contain the names of the personnel hired to handle extension classes, but also the name and signature of the school head, as well as the name of the specific school where the extension classes were held.[25]

Even assuming that the COA correctly disallowed the said allowances/honoraria, those who took part in the disbursement cannot *ipso facto* be held personally liable therefor since they did not fail to exercise the diligence of a good father of a family and have processed the disbursements in consonance with laws and procedures which they have been following since 1999. Also, the long practice of hiring teachers to handle extension classes, as well as the hiring of non-teaching personnel which is necessary and indispensable to the operation of extension classes, and the payment of their allowances/honoraria which have never been questioned by the COA, more than sufficiently show that the disbursement of 2008 SEF therefor which they have been doing for almost a decade was made in good faith and under color of law.[26]

For its part, COA maintained that it did not commit grave abuse of discretion when it affirmed the disallowance of the payments made by the petitioner for the allowances/honoraria of locally-funded teaching personnel of DepEd-Division of Camarines Sur that was charged against petitioner's 2008 SEF for the reason that although under Section 272 of the LGC, SEF may be used for the operation and maintenance of schools which includes the establishment of extension classes, the same must first comply with the requirements set forth in DECS-DBM-DILG JC No. 01-A, specifically the prior approval of the DepEd Secretary upon the recommendation of the DepEd Regional Director and certification from the division superintendent as to the necessity and urgency of establishing extension classes in the LGUs provided that the number of pupils therein shall at least be 15, must first be

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23 Id. at 15-17.
24 Id. at 158-159.
25 Id. at 17-19.
26 Id. at 159-161.

obtained. Of the mandatory requirements, only the Certification attesting to the necessity and urgency of establishing extension classes in elementary school was presented.[27]

As regards the payment of allowances to non-teaching personnel employed in the extension classes, COA insisted that the same was irregular in light of DECS-DBM-DILG JC No. 01-B which provides that only the salaries and authorized allowances of teaching personnel hired to handle extension classes may be charged against the SEF. The argument of the petitioner that the power to use the SEF for the operation and maintenance of public schools necessarily carried with it the power to use the same to pay the salaries of non-teaching personnel is gravely erroneous considering that R.A. No. 5447,[28] the law which created the SEF, specifically stated that the same shall be used for the organization and operation of extension classes including the creation of positions of classroom teachers, head teachers and principals for such extension classes. It did not include non-teaching personnel who were hired to handle extension classes. Contrary to the view of the petitioner, the Court had been explicit in *COA v. Province of Cebu* that only salaries of public school teachers who handle extension classes may be charged to the SEF.[29]

The COA likewise insisted on the validity of the subject joint circulars. It contended that administrative regulations, such as the subject joint circulars, which were enacted by the administrative agencies to implement and interpret the law which they are entrusted to enforce have the force of law and are entitled to respect. They cannot be collaterally attacked as there is a legal presumption of the validity of these rules. Moreover, the COA contended that it is beyond the scope of a *certiorari* petition to determine whether a particular issuance by an administrative agency is valid or not. *Certiorari* petition is also not the proper avenue to declare the subject joint circulars illegal because petitions for *certiorari* seek solely to correct defects in jurisdiction. Even if the Court were to rule on their validity, the joint circulars must still be declared as valid because they were issued in the proper exercise of the concerned government agencies' quasi-legislative powers. Contrary to petitioner's view, the joint circulars did not expand the provisions of the LGC, but merely filled in the details of the law which Congress may not have the opportunity or competence to provide.[30]

Lastly, the COA claimed that the joint certification issued by the acting HRMO and SDS was properly rejected as basis for the payments

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27 Id. at 105-107.

28 AN ACT CREATING A SPECIAL EDUCATION FUND TO BE CONSTITUTED FROM THE PROCEEDS OF AN ADDITIONAL REAL PROPERTY TAX AND A CERTAIN PORTION OF THE TAXES ON VIRGINIA-TYPE CIGARETTES AND DUTIES ON IMPORTED LEAF TOBACCO, DEFINING THE ACTIVITIES TO BE FINANCED, CREATING SCHOOL BOARDS FOR THE PURPOSE, AND APPROPRIATING FUNDS THEREFROM.

29 *Rollo*, pp. 107-109.

30 Id. at 109-112.

indicated in the payroll due to the impossibility that they have personally witnessed the daily attendance of all the personnel listed in the payroll. The absence of the certification by the head teachers cast doubt on the validity, propriety and authenticity of those who claim payment for their services.[31]

The Ruling of the Court

We find merit in the petition.

At the core of the present petition is the question of whether petitioner, through the approving officers, is liable to refund the disallowed fund subject of ND No. 2011-200-101(08) in the total amount of ₱5,820,843.30.

In asserting non-culpability, the petitioner attacks the validity of DECS-DBM-DILG Joint Circular No. 1-A, alleging that it constitutes an invalid exercise of the administrative rule-making power of the concerned agencies and violates the principle of local autonomy granted to LGUs.

Under Section 4, Article X of the Constitution:

> SEC. 4. The President of the Philippines shall exercise general supervision over local governments. Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays shall ensure that the acts of their component units are within the scope of their prescribed powers and functions.

The Court, in *Pimentel v. Aguirre*,[32] further delineated the scope of Executive supervision over local government units as exclusive of control, or the power to restrain local government action.

> This provision [Sec.4, Art. X of the 1987 Constitution] has been interpreted to exclude the power of control. In *Mondano v. Silvosa*, the Court contrasted the President's power of supervision over local government officials with that of his power of control over executive officials of the national government. It was emphasized that the two terms — **supervision and control** — differed in meaning and extent. The Court distinguished them as follows:
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> > In administrative law, **supervision** means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform their duties.

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31 Id. at 112-113.

32 *Pimentel, Jr. v. Aguirre*, 391 Phil. 84 (2000).

> **Control**, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer ha[s] done in the performance of his duties and to substitute the judgment of the former for that of the latter.
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> In *Taule v. Santos*, we further stated that the Chief Executive wielded no more authority than that of checking whether local governments or their officials were performing their duties as provided by the fundamental law and by statutes. He cannot interfere with local governments, so long as they act within the scope of their authority. "**Supervisory power, when contrasted with control, is the power of mere oversight over an inferior body; it does not include any restraining authority over such body,**" we said.
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> In a more recent case, *Drilon v. Lim*, the difference between control and supervision was further delineated. Officers in control lay down the rules in the performance or accomplishment of an act. If these rules are not followed, they may, in their discretion, order the act undone or redone by their subordinates or even decide to do it themselves. On the other hand, supervision does not cover such authority. Supervising officials merely see to it that the rules are followed, but they themselves do not lay down such rules, nor do they have the discretion to modify or replace them. If the rules are not observed, they may order the work done or redone, but only to conform to such rules. They may not prescribe their own manner of execution of the act. They have no discretion on this matter except to see to it that the rules are followed.[33] (Emphases supplied and citations omitted)

While there may a valid issue with regard to the validity of the circular involved in this case in terms of how it impinges on the principle of local autonomy, the respondent correctly pointed out that administrative regulations, which were enacted by administrative agencies to interpret and implement the law they were entrusted to enforce, have the force of law. Thus, they cannot be collaterally attacked as there is a legal presumption of validity of these rules.

We find respondent's position on this score to be well-taken.

The prevailing rule in constitutional litigation is that no question involving the constitutionality or validity of a law or governmental act may be heard and decided by the Court unless there is compliance with the legal requisites for judicial inquiry, *i.e.*, (a) there must be an actual case or controversy calling for the exercise of judicial power; (b) the person challenging the act must have the standing to question the validity of the subject act or issuance; (c) the question of constitutionality must be raised at the earliest opportunity; and (d) the issue of constitutionality must be the very *lis mota* of the case.[34]

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[33] Id. at 98-100.

[34] *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, 815 Phil. 1067, 1089-1090 (2017).

Seeking judicial review at the earliest opportunity does not mean direct recourse to this Court. Rather, it is questioning the constitutionality of the act in question immediately in the proceedings below.[35]

In this case, petitioners failed to question the validity of the subject circular at the earliest opportunity. It was only before this Court, that they are now raising the circular's validity *vis-a-vis* the principle of local autonomy.

Our concurrence with respondent on this point, notwithstanding, still we find that petitioner is ***not liable*** to pay for the disallowed funds.

Under the principle of *quantum meruit*, a person may recover a reasonable value for the thing he delivered or the service that he rendered. Literally meaning "as much as he deserves," this principle acts as a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it.[36]

Here, there is no question that the Provincial Human Resource Management Officer (PHRMO) and the Schools Division Superintendent (SDS) of Camarines Sur certified that locally-funded teachers actually rendered their services for calendar year 2008.[37]

While COA argues that the joint certification of the PHRMO and SDS should be rejected, as it was impossible that they personally witnessed the daily attendance of all the personnel listed in the payroll, we find such imputation of malfeasance on the part of the concerned government officials to be warrantless, baseless and contrary to the presumption of regularity in the performance of official duties. We, therefore, give weight to the certification that the concerned personnel who received the questioned allowances actually rendered services for the period stated.

It is apparent, based on the rulings of the COA, COA-RO V, Auditor and ATL that, the disallowance was made not because no service was rendered by the concerned recipients. Rather, it was due to the failure of petitioners to comply with the mandatory requirements of DECS-DBM-DILG JCs particularly as to: (1) the prior approval of DECS (now DepEd) Secretary of the extension classes; and (2) the recommendation of the DECS Regional Director. It is only the third requirement, certification by the division superintendent as to the necessity and urgency of establishing

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35 *Arceta v. Judge Mangrobang*, 476 Phil. 106, 114-115 (2004).
36 *Geronimo v. Commission on Audit*, G.R. No. 224163, December 4, 2018.
37 *Rollo*, pp. 42-50.

extension classes in the LGUs, which petitioners were able to meet.

In light of the principles of *quantum of meruit* and unjust enrichment, we find that it would be the height of injustice if the personnel who rendered services for the period in question would be asked to return the honoraria and allowances they actually worked for, simply because the approving officers failed to comply with certain procedural requirements. By necessary implication, it would also be inequitable if the approving officers would be required to shoulder the return of the disallowed funds, even though such were given for actual service rendered.

Indeed, it cannot be said that the approving officers acted in bad faith as the COA did not question the subject allowances/honoraria from 1999 to 2008. Thus, there were no *indicia* that would have alerted them that there was something remiss or irregular with the questioned allowance.

As for the non-teaching personnel, the Court agrees with the petitioner that the authority to expend the SEF for the operation and maintenance of extension classes of public schools carries with it the authority to utilize the SEF not only for the salaries and allowances of the teaching personnel, but those of the non-teaching personnel alike who were hired as a necessary and indispensable auxiliary to the teaching staff. It is beyond question that the services of these non-teaching personnel are essential to the sound and efficient operation and maintenance of these extension classes. Without them, it would be impossible to hold these extension classes as teachers would have to concern themselves not only with their duty to teach, but also the maintenance of classrooms and other logistical needs pertaining to the holding of these extension classes.

The Court does not agree with the COA that Section 1(a) of R.A. No. 5447 limited the use of the SEF only for the creation of position of classroom teachers, head teachers and principals for such extension classes. For ease of reference, the Court recapitulates the said provision. Thus:

> SEC. 1. *Declaration of policy; creation of Special Education Fund.* It is hereby declared to be the policy of the government to contribute to the financial support of the goals of education as provided by the Constitution. For this purpose, there is hereby created a Special Education Fund, hereinafter referred to as the Fund, to be derived from the additional tax on real property and from a certain portion of the taxes on Virginia-type cigarettes and duties on imported leaf tobacco, hereinafter provided for, which shall be expended exclusively for the following activities of the Department of Education:
>
> > (a) the organization and operation of such number of extension classes as may be needed to accommodate all children of school age desiring to enter Grade I, including

> the creation of positions of classroom teachers, head teachers and principals for such extension classes, which shall not exceed the standard requirements of the Bureau of Public Schools: Provided, That under equal circumstances, in the opening of such extension classes, priority shall be given to the needs of barrios;

The phrase which states that the SEF shall be expended for *the organization and operation of such number of extension classes as may be needed to accommodate all children of school age desiring to enter Grade 1* shows that the salaries and allowances of non-teaching personnel which, as previously discussed, are indispensable to the organization and operation of extension classes, are also included in the list for which the SEF may be utilized. This must be so in light of the doctrine of necessary implication which states that every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege. In *Department of Environment and Natural Resources v. United Planners Consultants, Inc.*,[38] the doctrine was explained, thus:

> No statute can be enacted that can provide all the details involved in its application. There is always an omission that may not meet a particular situation. What is thought, at the time of enactment, to be an all-embracing legislation may be inadequate to provide for the unfolding of events of the future. So-called gaps in the law develop as the law is enforced. One of the rules of statutory construction used to fill in the gap is the doctrine of necessary implication. The doctrine states that what is implied in a statute is as much a part thereof as that which is expressed. **Every statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms. *Ex necessitate legis*. And every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege.** This is so because the greater includes the lesser, expressed in the maxim, *in eo plus sit, simper inest et minus.*

To construe the law otherwise would result in absurdity because the hiring of non-teaching personnel is but a necessary consequence to the maintenance, operation and organization of the extension classes.

Contrary to the position of the COA, JC No. 01-B did not restrict the disbursement of the SEF for the payment of the salaries and allowances only of teaching personnel hired to handle extension classes. A plain reading of JC No. 01-B will show that it merely clarified JC No. 01-A by including among the priority items chargeable to SEF the payment of salaries and allowances of teachers hired to handle new classes as extensions of existing public elementary or secondary schools. Moreover, JC No. 01-B did not

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[38] 754 Phil. 513, 530, citing *Atienza v. Villarosa*, 497 Phil. 689, 702-703 (2005).

supersede or amend the broad provision of JC No. 01 which made the expenses for the operation and maintenance of public schools, including the organization of extension classes chargeable against the SEF. Thus, it stands to reason that the joint circulars encompass the payment of the salaries and allowances of both the teaching and non-teaching personnel hired to handle extension classes.

The Court also cannot agree with the asseveration of the COA that this Court had already explicitly ruled in *COA v. Province of Cebu* that only salaries of public school teachers who handle extension classes are chargeable against the SEF, thereby impliedly suggesting that allowances/honoraria of non-teaching personnel cannot be taken from the SEF. First, the issues raised in the said case were confined only to whether the salaries and personnel-related benefits of *public school teachers* appointed by the local chief executives in connection with the establishment and maintenance of extension classes, as well as the expenses for college scholarship grants may be charged to the SEF of the local government unit concerned.[39] The question of whether the allowances/honoraria of *non-teaching personnel* that were hired in connection with the establishment of these additional classes was never passed upon. Second, the clarification made by the Court in the said case where it stated:

> Indeed, the operation and maintenance of public schools is lodged principally with the DECS. This is the reason why only salaries of public school teachers appointed in connection with the establishment and maintenance of extension classes, *inter alia*, pertain to the supplementary budget of the local school boards. Thus, it should be made clear that not every kind of personnel-related benefits of public school teachers may be charged to the SEF. The SEF may be expended only for the salaries and personnel-related benefits of teachers appointed by the local school board in connection with the establishment and maintenance of extension classes.[40]

should not be taken to mean that the allowances/honoraria of non-teaching are not chargeable against the SEF because, as earlier pointed out, the allowances/honoraria of non-teaching personnel was not the issue in the said case.

In summary, we find that a reversal of the COA Decision and Resolution is in Order as petitioner, through its approving officers, is not liable to refund the same. Actual services were rendered by the concerned recipients, teaching and non-teaching personnel alike, and no bad faith may be imputed on the approving officers.

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39 *Commission on Audit v. Province of Cebu* supra note 11.

40 Id. at 530.

WHEREFORE, premises considered, the petition is **GRANTED.** The assailed Decision No. 2014-454 dated December 29, 2014 and the Resolution docketed as Decision No. 2016-268 dated September 26, 2016 are **REVERSED and SET ASIDE**. The Notice of Disallowance No. 2011-200-010(08) which found Nora Cariño, Lizerna Molave, Ma. Teresa Genova, Rubi Estefani and Susan Laquindanum liable to refund the disallowed amount is **DISMISSED**.

SO ORDERED.

JOSE C. REYES, JR.
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice

See separate concurring opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

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

DIOSDADO M. PERALTA
Chief Justice

ATTESTED BY THE COURT:

EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court