

EN BANC

G.R. No. 200418 – CONFEDERATION FOR UNITY, RECOGNITION AND ADVANCEMENT OF GOVERNMENT EMPLOYEES [COURAGE], represented by its National President FERDINAND GAITE, SOCIAL WELFARE EMPLOYEES ASSOCIATION OF THE PHILIPPINES [SWEAP-DSWD], represented by its National President RAMON FELIPE E. LOZA, NATIONAL FEDERATION OF EMPLOYEES ASSOCIATIONS IN THE DEPARTMENT OF AGRICULTURE [NAFEDA], represented by its National President SANTIAGO Y. DASMARINAS, JR., AND DEPARTMENT OF AGRARIAN REFORM EMPLOYEES ASSOCIATION [DAREA], REPRESENTED BY ITS NATIONAL PRESIDENT ANTONIA H. PASCUAL, *petitioners, versus* FLORENCIO B. ABAD, in his capacity as the Secretary of the DEPARTMENT OF BUDGET AND MANAGEMENT and CORAZON J. SOLIMAN, in her capacity as SECRETARY OF THE DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT, *respondents*.

Promulgated:

November 10, 2020

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CONCURRING OPINION

CAGUIOA, J.:

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

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



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

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

That said, the Secretary is, in my view, fully empowered under appropriate circumstances to effect a refund in case of overpayment or undue payment of salaries and other additional compensation within her department. Section 6, Chapter 2, Book IV of the Administrative Code of 1987¹ vests the power of supervision and control upon the Department Secretary, thus:

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

In relation thereto, and more specific to the issue at hand, Presidential Decree No. 1445² provides:

Section 2. Declaration of Policy. It is the declared policy of the State that all resources of the government shall be managed, expended or utilized in accordance with law and regulations, and safeguard against loss or wastage through illegal or improper disposition, with a view to ensuring efficiency, economy and effectiveness in the operations of government. The responsibility to take care that such policy is faithfully adhered to rests directly with the chief or head of the government agency concerned. (Emphasis and underscoring supplied)

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Section 102. Primary and secondary responsibility.

1. The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency.

Under the belief — albeit mistaken — that an overpayment has been made, the action taken by the DSWD Secretary is justified and within her powers. The responsibility attaching to the Department Secretary to safeguard the funds of her department, coupled with her general power of

¹ Approved on July 25, 1987.

² Approved on June 11, 1978.



supervision and control, authorizes her to countermand any issuance or grant of compensation should she later find out that this was improper or irregular.

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

SECTION 43. *Authorized Deductions.* — Deductions from salaries, emoluments or other benefits accruing to any government employee chargeable against the appropriations for Personal Services may be allowed for the payment of individual employee's contributions or obligations due the following:

- (a) The BIR, GSIS, HDMF and PHILHEALTH;
- (b) Mutual benefits associations, thrift banks and non-stock savings and loan associations duly operating under existing laws which are managed by and/or for the benefit of government employees;
- (c) Associations/cooperatives/provident funds organized and managed by government employees for their benefit and welfare;
- (d) Duly licensed insurance companies accredited by national government agencies; and
- (e) Organizations or companies such as banks, non-bank financial institutions, financing companies and other similar entities that have authority to engage in lending and mutual benefits or mutual aid system as stated in their respective constitutions and by-laws approved by government regulating bodies such as the Securities and Exchange Commission (SEC), Insurance Commission (IC), Bangko Sentral ng Pilipinas (BSP) and Cooperative Development Authority (CDA).

PROVIDED, That such deductions shall not reduce the employee's monthly net take home pay to an amount lower than Three Thousand Pesos (P3,000), after all authorized deductions: PROVIDED, FURTHER, That in the event total authorized deductions shall reduce net take home pay to less than Three Thousand Pesos (P3,000), authorized deductions under item (a) shall enjoy first preference, those under item (b) shall enjoy second preference, and so forth.

While Section 43 lists the deductions from salaries and other benefits of government employees that may be allowed, I am unable to agree that this authorization is an exclusive list which forecloses other valid salary deductions, including those that may be ordered by a head of agency




pursuant to her power of control and supervision and as a measure of fiscal responsibility.

An example of an allowable refund is in the case of improper salary adjustment or step increment under the Manual on Position Classification and Compensation³ and DBM BC No. 2020-4.⁴ This same form was used by the Court's Office of Administrative Services in implementing the salary adjustments under Executive Order No. 201 and is still being used in Notices of Step Increment. Section 43 cannot prevent a refund in the form of salary deduction if the same is done with the conformity of the employee concerned.

As the mode of refund or payment, salary deductions are also allowed by issuances other than Section 43: Office of the Court Administrator (OCA) Circular No. 63-2012⁵ provides that requests to make payment of fines in administrative cases through staggered salary deductions may be recommended for approval of the Court, and Commission on Audit (COA) Resolution No. 2015-031⁶ allows government employees held liable for COA disallowances to settle disallowed salaries and personal benefits, allowances or emoluments by installments through monthly payroll deductions, subject only to the minimum take home pay requirements in the GAA.⁷

ACCORDINGLY, I vote to PARTLY GRANT the petition.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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

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

⁴ See Sec. 7.3.

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

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

⁷ Id. at Sec. 3.