Republic of the Philippines
Supreme Court
Bacolod City

EN BANC

LUCILO R. BAYRON, City Mayor, JIMMY L. CARBONELL, HENRY A. GADIANO, FELIBERTO S. OLIVEROS III, ROBERTO D. HERRERA, and MYLENE J. ATIENZA, all of the City Government of Puerto Princesa, Petitioners,	**G.R. No. 253127**
	Present:
	GESMUNDO, *C.J.*, LEONEN, CAGUIOA, HERNANDO, LAZARO-JAVIER, INTING, ZALAMEDA, M. LOPEZ, GAERLAN, ROSARIO, J. LOPEZ, DIMAAMPAO,* MARQUEZ,** KHO, JR., *and* SINGH, *JJ.*
- versus -	
	Promulgated:
COMMISSION ON AUDIT, Respondent.	November 29, 2022

x----------x

DECISION

GAERLAN, *J.*:

Before the Court is a Petition for *Certiorari*[1] under Rule 64, in relation to Rule 65 of the Rules of Court that seeks to set aside the Commission on Audit's (COA) (respondent's) Decision No. 2020-100[2] dated January 16, 2020.

---

* On official leave.
** On official business.
1 *Rollo*, pp. 3-26.
2 Id. at 28-40.

Factual Antecedents

On June 15, 2010, the *Sangguniang Panlungsod* of Puerto Princesa City, presided over by petitioner Lucilo R. Bayron (Bayron), as Vice-Mayor at the time, enacted Ordinance No. 438,[3] which established the Early & Voluntary Separation Incentive Program (EVSIP) of the Puerto Princesa City Government (PPCG). Said program was adopted with the following purposes in mind:

> Section 3. PURPOSE, INTENT AND OBJECTIVE.
>
> a) To adopt an effective and efficient organizational structure of human resources in the City Government of Puerto Princesa thru [*sic*] re-alignment and streamlining of work process[es] thereby improving productivity and delivery of public service;
>
> b) **To grant incentive for the loyalty and satisfactory public service of an employee who has rendered at least ten (10) years of city government service**; [and]
>
> c) [To e]ncourage retireable [*sic*] employees to avail of the early separation program and possibly start anew in other private endeavors thus, [*sic*] helping in the local and national economic developments and empower them to become economically active citizens of the community.[4] (Emphasis and underscoring supplied)

Section 6 of the said Ordinance provides the specifics of the proposed benefits and/or incentives to be given to qualified PPCG employees:

> Section 6. BENEFITS AND/OR INCENTIVES. The applicant who will qualify under this program shall be entitled to receive incentives to be computed as follows:
>
> a) Ten (10) to twenty (20) years of service: Basic monthly salary based on the last salary received **multiplied by 1.5** and the product of which shall be multiplied by the number of years of service;
>
> b) Twenty-one (21) to thirty (30) years of service: Basic monthly salary based on the last salary received **multiplied by 1.8** and the product of which shall be multiplied by the number of years of service; [and]
>
> c) Thirty-one (31) and above years of service: Basic monthly salary based on the last salary received **multiplied by 2.0** and the

---

3 AN ORDINANCE ESTABLISHING THE EARLY AND VOLUNTARY SEPARATION INCENTIVE PROGRAM OF THE CITY GOVERNMENT OFFICIALS AND EMPLOYEES OF PUERTO PRINCESA, AND PROVIDING FUNDS THEREFOR; id. at 41-45.

4 Id. at 42.

> product of which shall be multiplied by the number of years of service.
>
> In addition to the appropriate benefits and/or incentives provided above, the employee who availed of the Program shall also be entitled to receive additional benefits as follows:
>
> a) Commutation of unused vacation and sick leaves in accordance with existing rules and regulations on the matter[;] and
>
> b) The corresponding amount as provided for in the existing *Salamat Paalam Program* of the City Government.
>
> Provided further, that the official/employee under this Program **shall also be entitled to receive any benefits due to him/her under any local or national agencies such as but not limited to GSIS, HMDF (PAG-IBIG) and Phil-Health**.[5] (Emphases and underscoring supplied)

Section 10 of the same Ordinance appropriated no less than ₱50 million from the PPCG's annual budget starting 2011.[6] The measure was approved on August 11, 2010 by then-Mayor Edward S. Hagedorn.[7] On June 21, 2010, the *Sangguniang Panlungsod* also enacted Resolution No. 850-2010,[8] which provided for the Implementing Rules and Resolutions (IRR) for Ordinance No. 438. Bayron also presided over the session that passed the same, and the measure was approved by then-Mayor Hagedorn on November 2, 2010.[9]

PPCG's EVSIP subsequently became the subject of respondent's review. Its Audit Team Leader and Supervising Auditor for Audit Team 3, Local Government Section-E (under its Regional Office No. IV-B) jointly issued Notice of Disallowance (ND) Nos. 13-057-100 (2011) to 13-130-100 (2011), all dated November 25, 2013, and ND Nos. 13-131-100 (2011) to 13-150-100 (2012), all dated December 2, 2013—all *vis-à-vis* the payment of benefits under PPCG's EVSIP in the total amount of ₱89,672,400.74.[10] No copies of these NDs are attached to the record.

Bayron, Jimmy L. Carbonell, Henry A. Gadiano, Feliberto S. Oliveros III, Roberto D. Herrera, and Mylene J. Atienza (collectively, petitioners), in their various capacities as PPCG officials and employees along with others, including then-Mayor Hagedorn, filed two main Letters of Appeal/Appeal Memoranda[11] before respondent's Regional Office No. IV-B, which prayed

---

5 Id. at 43.
6 Id.
7 Id. at 45.
8 A RESOLUTION PROVIDING THE IMPLEMENTING RULES AND REGULATIONS OF CITY ORDINANCE NO. 438 BETTER KNOWN AS "THE PUERTO PRINCESA CITY GOVERNMENT'S EARLY AND VOLUNTARY SEPARATION INCENTIVE PROGRAM."; id. at 46-52.
9 Id. at 52.
10 As borne from the text of Respondent's Decision No. 2020-100; id. at 38.
11 Id. at 53-66 and 67-78.

for the reversal of the NDs and of their ruling that they, as PPCG officials and employees, should be held liable for their roles in various transactions covering the implementation and disbursement of the EVSIP. Respondent's Regional Office No. IV-B promulgated its Decision No. 2016-09[12] on March 28, 2016, with the following dispositive portion:

> **WHEREFORE**, premises considered, the Consolidated Appeal of former [City] Mayor Edward S. Hagedorn, et al., all of Puerto Princesa City, Palawan, is hereby **DENIED** for lack of merit. Accordingly, Notice of Disallowance Nos. 13-057-100 (2011) to 13-130-100 (2011), all dated November 25, 2013, and 13-131-100 (2011) to 13-150-100 (2012), all dated December 2, 2013, on the payment of retirement benefits under the "Early and Voluntary Separation Incentive" program in the total amount of P89,672,400.74, are **AFFIRMED**.[13] (Emphasis in the original)

Respondent's Regional Office No. IV-B reasoned that the first batch of the consolidated appeals (*i.e.*, ND Nos. Nos. 13-057-100 [2011] to 13-130-100 [2011], all dated November 25, 2013) was filed 197 days from date of receipt of the subject NDs—well beyond the six-month reglementary period provided in Section 4,[14] Rule V of respondent's 2009 Revised Rules of Procedure. Thus, the said NDs had already become final and executory.

As to the second batch, respondent's Regional Office No. IV-B affirmed the following findings of the Audit Team Leader and Supervising Auditor:

1. The PPCG's EVSIP was not enacted pursuant to any reorganization law for the PPCG.

2. Nowhere in Section 76[15] of Republic Act (R.A.) No. 7160,[16] otherwise known as the Local Government Code of 1991 (as amended), does it explicitly state that the PPCG is empowered to create an early retirement program for its employees.

3. PPCG's EVSIP is basically a supplementary retirement plan designed to reward employees' loyalty and service, the grant of which is inextricably linked to, and inseparable from, the

---

12 Id. at 79-95.

13 Id. at 95.

14 Section 4. *When Appeal Taken.* — An Appeal must be filed within six (6) months after receipt of the decision appealed from.

15 Section 76. *Organizational Structure and Staffing Pattern.* — Every local government unit shall design and implement its own organizational structure and staffing pattern, taking into consideration its service requirements and financial capability, subject to the minimum standards and guidelines prescribed by the Civil Service Commission.

16 Approved on October 10, 1991.

application and approval of their retirement benefits under law. It is thus prohibited under Section 10[17] of R.A. No. 4968,[18] which amended Section 28 of Commonwealth Act (C.A.) No. 186,[19] otherwise known as the Government Service Insurance Act.

4. The operative fact doctrine is inapplicable, since Ordinance No. 438 was not declared void or unconstitutional by any court.

5. Petitioners' acts in certifying the necessity and legality of the EVSIP as charges to PPCG's appropriations required their official discretion or judgment, and thus were not ministerial in nature. They thus cannot be relieved of liability concerning the same.

6. PPCG employees who received any incentives under the EVSIP have the obligation to return the same under the principle of *solutio indebitii* under Article 2154[20] of R.A. No. 386,[21] otherwise known as the Civil Code of the Philippines.

Petitioners, *i.e.*, the remaining appellants directly affected by respondent's Regional Office No. IV-B's findings of liability, accordingly filed their Petition for Review[22] before respondent, and the latter promulgated its Decision No. 2020-100[23] with the following dispositive portion:

> **WHEREFORE**, premises considered, the Petition for Review of Mayor Lucilo R. Bayron, et al., all of the City Government of Puerto Princesa, Palawan, is hereby **DENIED**. Accordingly, the Commission on Audit Regional Office No. IV-B Decision No. 2016-09 dated March 28, 2016, which affirmed Notice of Disallowance (ND) Nos. 13-057-100(2011) to 13-130-100(2011), all dated November 25, 2013, and 13-131-100(2011) to 13-150-100(2012), all dated December 2, 2013, on the payment of retirement benefits under the Early and Voluntary Separation Incentive Program, in the total amount of P89,672,400.74, is **AFFIRMED**.

---

17 Section 10. Subsection (b) of Section twenty-eight of the same Act, as amended, is hereby further amended to read as follows:
"(b) Hereafter no insurance or retirement plan for officers or employees shall be created by any employer. All supplementary retirement or pension plans heretofore in force in any government office, agency, or instrumentality or corporation owned or controlled by the government, are hereby declared inoperative or abolished: *Provided*, That the rights of those who are already eligible to retire thereunder shall not be affected."

18 AN ACT AMENDING FURTHER COMMONWEALTH ACT NUMBERED ONE HUNDRED AND EIGHTY-SIX, AS AMENDED; approved on June 17, 1967.

19 Approved on November 14, 1936.

20 Article 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

21 Approved on June 18, 1949.

22 *Rollo*, pp. 96-107.

23 Id. at 28-40.

> Moreover, the Prosecution and Litigation Office, Legal Services Sector, is hereby directed to forward the case to the Office of the Ombudsman for investigation and filing of appropriate charges against the persons responsible for the transaction, if warranted.[24] (Emphasis in the original)

Along with its affirmation of the findings of its Regional Office No. IV-B, respondent cited the case of *City of General Santos v. COA*[25] in its reiteration of R.A. No. 4968's proscription of insurance or retirement plans for government employees other than the Government Service Insurance System (GSIS), and of respondent's power to disallow unauthorized disbursements of local government units (LGUs) without necessarily declaring the relevant ordinances invalid. Respondent also did not consider petitioners' plea of good faith with regard to the disbursements, since the Court had already affirmed as early as the case of *Conte v. COA*[26] the proscription in no uncertain terms of separate insurance or retirement plans for government employees.

Without filing a motion for reconsideration, petitioners filed the present action and now invoke the Court's power of judicial review *vis-à-vis* respondent's alleged grave abuse of discretion in affirming the subject NDs.

Arguments of the Parties

Petitioners present the following arguments in support of their cause of action:

1. Respondent erred and gravely abused its discretion when it affirmed the subject NDs due to is wrong classification of PPCG's EVSIP as a supplementary retirement package, when it should be classified as an early retirement plan that is not violative of Section 28(b) of C.A. No. 186, as amended.[27]

2. The benefits under PPCG's EVSIP are actually analogous to a government employee's separation pay that should not be considered excessive and tantamount to double compensation, which is prohibited under Section 95[28] of the Local Government Code of 1991.[29]

---

24 Id. at 38-39.
25 733 Phil. 687 (2014).
26 332 Phil. 20 (1996).
27 Id. at 9-12.
28 Section 95. *Additional or Double Compensation.* — No elective or appointive local official or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of Congress, any present, emoluments, office, or title of any kind from any foreign government. **Pensions or gratuities shall not be considered as additional, double, or indirect compensation**. (Emphases and underscoring supplied)
29 *Rollo*, pp. 12-14.

3. They should not be held liable for enacting and/or implementing Ordinance No. 438 since they were acting within the authority and powers conferred by the Local Government Code of 1991. Specifically, petitioners invoke Section 76, the general welfare clause under Section 16,[30] and the power of LGU legislative bodies to determine the salaries, wages, allowances and other emoluments and benefits of LGU officials and employees under Section 458(a)(1)(viii). Section 5(a)[31] and (c)[32] of the same law also provides for the favorable interpretation in favor of LGUs in case of doubt as to the determination of their powers. Moreover, Ordinance No. 438 should be presumed valid until struck down, and thus they were obligated to follow the letter of the local law in good faith.[33]

In its Comment[34] filed by the Office of the Solicitor General (OSG), respondent notes petitioners' failure to file a motion for reconsideration before filing the present Petition, which is generally an indispensable requirement before filing special civil actions for *certiorari*. It again cited the case of *City of General Santos v. COA*[35] as its legal basis for classifying PPCG's EVSIP as a prohibited separate and supplementary early retirement plan, and asserted that its findings as a specialized administrative body should be accorded great respect and finality due to the absence of any unfairness or arbitrariness in its Decision No. 2020-100 dated January 16, 2020. As to petitioners' plea of good faith, respondent acceded to the same and prayed that its assailed Decision No. 2020-100 be modified such that no refund on the part of petitioners or other recipients would be ordered.

---

30 Section 16. *General Welfare.* — Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

31 (a) Any provision on a power of a local government unit shall be liberally interpreted in its favor, and in case of doubt, any question thereon shall be resolved in favor of devolution of powers and of the lower local government unit. Any fair and reasonable doubt as to the existence of the power shall be interpreted in favor of the local government unit concerned[.]

32 (c) The general welfare provisions in this Code shall be liberally interpreted to give more powers to local government units in accelerating economic development and upgrading the quality of life for the people in the community[.]

33 *Rollo*, pp. 14-22.

34 Id. at 200-218.

35 Supra note 25.

In their Reply,[36] petitioners cite the twin cases of *Philippine International Trading Corp. v. COA*[37] *vis-à-vis* their lack of filing a motion for reconsideration of respondent's Decision No. 2020-100, since the said motion may be dispensed with if the question or issue raised before the Court is one purely of law. Moreover, petitioners assert that respondent had no power to either declare Ordinance No. 438 invalid or to disallow payments made thereunder as bereft of legal basis. And finally, petitioners reassert their position that PPCG's EVSIP is a valid and subsisting program not contrary to Section 28(b) of C.A. No. 186, as amended by R.A. No. 4968.

The Issues

For the Court's resolution are two pure questions of law: 1) whether or not petitioners should have filed a motion for reconsideration of respondent's Decision No. 2020-100 dated January 16, 2020; and 2) whether or not Ordinance No. 438 (and consequently Resolution No. 850-2010) of the *Sangguniang Panlungsod* of Puerto Princesa City constitutes valid basis for PPCG's EVSIP.

The Ruling of the Court

The Petition is bereft of merit, and must be denied.

At the outset, a discussion of the necessity (or dispensability) of filing a motion for reconsideration *vis-à-vis* respondent's final decisions and resolutions is in order. It is true that the twin cases of *Philippine International Trading Corp. v. COA*[38] do mention that motions for reconsideration may be dispensed with when the issues raised are pure questions of law, and when the questions raised are the same as those already passed upon and argued before the lower court or administrative body. The present Petition's main anchor is indeed the validity of the appropriations set forth in Ordinance No. 438 for PPCG's EVSIP, and the same is indeed purely a question of law that can be resolved by a simple reference to statutory construction and standing jurisprudence.

However, the Petition also carries with it a question of fact: petitioners' plea of good faith *vis-à-vis* the enactment and implementation of the appropriations in Ordinance No. 438. Said question of fact can only be determined by an evaluation of petitioners' actions and state of mind, but given the fact that the records of respondent's Decision No. 2020-100 have

---

36 *Rollo*, pp. 228-250.
37 821 Phil. 144 (2017) and 461 Phil. 737 (2003).
38 Id.

already been forwarded to the Office of the Ombudsman for investigation, the Court deems it prudent to defer ruling on petitioners' alleged good faith, which is also determinative of respondent's right to pursue them and others for collection of the disallowed amount of ₱89,672,400.74. With no more question of fact to deal with, the Petition is ripe for the Court's cognizance.

Having established its competence to resolve the remaining pure question of law that is the validity of Ordinance No. 438, the Court now proceeds to the Petition's merits and substantive issues.

Section 458(a)(2)(i) of the Local Government Code of 1991 empowers a *Sangguniang Panlungsod* to "[a]pprove the annual and supplemental budgets of the city government and appropriate funds for specific programs, projects, services and activities of the city, or for other purposes ***not contrary to law***, in order to promote the general welfare of the city and its inhabitants."[39] While LGUs in general are apt in their regular invocation of the general welfare clause under Section 16 of the Local Government Code of 1991, they must always remember that their powers and exercise thereof are circumscribed by national legislation and policy.

The Court declared as early as *United States v. Abendan*[40] that an ordinance enacted by the legislative body of an LGU is valid "unless it contravenes the fundamental law of the Philippine Islands, or an Act of the Philippine Legislature, or unless it is against public policy, or is unreasonable, oppressive, partial, discriminating, or in derogation of common right."[41] In *Magtajas v. Pryce Properties Corp., Inc.*,[42] the Court explained the rational for the supremacy of national laws over local laws, *viz.*:

> The rationale of the requirement that the ordinances should not contravene a statute is obvious. Municipal governments are only agents of the national government. Local councils exercise only delegated legislative powers conferred on them by Congress as the national lawmaking body. The delegate cannot be superior to the principal or exercise powers higher than those of the latter. It is a heresy to suggest that the local government units can undo the acts of Congress, from which they have derived their power in the first place, and negate by mere ordinance the mandate of the statute.[43]

In *Batangas CATV, Inc. v. Court of Appeals*,[44] the Court stressed that "where the state legislature has made provision for the regulation of conduct,

---

39 Emphasis, underscoring, and italics supplied.
40 24 Phil. 165 (1913).
41 Id. at 168.
42 304 Phil. 428 (1994).
43 Id. at 446.
44 482 Phil. 544 (2004).

it has manifested its intention that the subject matter shall be fully covered by the statute, and that a municipality, under its general powers, cannot regulate the same conduct."[45] The Court further stated the following:

> It is a fundamental principle that municipal ordinances are inferior in status and subordinate to the laws of the state. An ordinance in conflict with a state law of general character and statewide application is universally held to be invalid. The principle is frequently expressed in the declaration that municipal authorities, under a general grant of power, cannot adopt ordinances which infringe the spirit of a state law or [are] repugnant to the general policy of the state. In every power to pass ordinances given to a municipality, there is an implied restriction that the ordinances shall be consistent with the general law.[46] (Citations omitted)

Thus, C.A. No. 186, as amended by R.A. No. 4968, cannot be circumvented by a mere ordinance creating a separate, parallel, and supplementary early retirement plan for an LGU's officials and employees. Section 28(b) of C.A. No. 186 is loud and clear: no supplementary retirement or pension plans other than the GSIS shall exist in any government office or instrumentality.

Petitioners, however, bank their case on the notion that jurisprudence supports their classification of PPCG's EVSIP as an early retirement plan/ separation pay not otherwise prohibited by the abovementioned provision.

The Court is unconvinced. Upon a close reading of their cited cases, one notes immediately a misplaced appreciation of their rulings. The Court's ruling in *GSIS v. COA*[47] was premised upon the implementation of R.A. No. 8291,[48] otherwise known as the GSIS Act of 1997—a reorganization of the institution. A full consideration of the Court's reasoning—as opposed to the two lone paragraphs cited by Petitioners—provides a fuller context of the cited case's impact:

> It is true that under Section 41(n) of Republic Act No. 8291, GSIS is expressly granted the power to adopt a retirement plan and/or financial assistance for its employees, but a closer look at the provision readily shows that this power is not absolute. It is qualified by the words "early," "incentive," and "for the purpose of retirement." The retirement plan must be an early retirement incentive plan and such early retirement incentive plan or financial assistance must be for the purpose of retirement.

---

45 Id. at 563.
46 Id. at 564.
47 674 Phil. 578 (2011).
48 Approved on May 30, 1997.

According to Webster's Third New International Dictionary, "early" means "occurring before the expected or usual time," while "incentive" means "serving to encourage, rouse, or move to action," or "something that constitutes a motive or spur."

It is clear from the foregoing that Section 41(n) of Republic Act No. 8291 contemplates a situation wherein GSIS, **due to a reorganization, a streamlining of its organization, or some other circumstance, which calls for the termination of some of its employees, must design a plan to encourage, induce, or motivate these employees, who are not yet qualified for either optional or compulsory retirement under our laws, to instead voluntarily retire. This is the very reason why under the law, the retirement plan to be adopted is in reality an incentive scheme to encourage the employees to retire before their retirement age**.

The above interpretation applies equally to the phrase "financial assistance," which, contrary to the petitioners' assertion, should not be read independently of the purpose of an early retirement incentive plan. Under the doctrine of *noscitur a sociis*, the construction of a particular word or phrase, which is in itself ambiguous, or is equally susceptible of various meanings, may be made clear and specific by considering the company of words in which it is found or with which it is associated. In other words, the obscurity or doubt of the word or phrase may be reviewed by reference to associated words. Thus, the phrase "financial assistance," in light of the preceding words with which it is associated, should also be construed as an incentive scheme to induce employees to retire early or as an assistance plan to be given to employees retiring earlier than their retirement age.

Such is not the case with the GSIS RFP. Its very objective, "[t]o motivate and reward employees for meritorious, faithful, and satisfactory service," contradicts the nature of an early retirement incentive plan, or a financial assistance plan, which involves a substantial amount that is given to motivate employees to retire early. **Instead, it falls exactly within the purpose of a retirement benefit, which is a form of reward for an employee's loyalty and lengthy service, in order to help him or her enjoy the remaining years of his [or her] life**.

Furthermore, to be able to apply for the GSIS RFP, one must be qualified to retire under Republic Act No. 660 or Republic Act No. 8291, or must have previously retired under our existing retirement laws. This only means that the employees covered by the GSIS RFP were those who were already eligible to retire or had already retired. Certainly, this is not included in the scope of "an early retirement incentive plan or financial assistance for the purpose of retirement."

The fact that GSIS changed the name from "Employees[']' Loyalty Incentive Plan" to "Retirement/Financial Plan" does not change its essential nature. **A perusal of the plan shows that its purpose is not to encourage GSIS's employees to retire before their retirement age, but to augment the retirement benefits they would receive under our present laws. Without a doubt, the GSIS RFP is a supplementary retirement plan,**

> **which is prohibited by the Teves Retirement Law**.[49] (Emphases and underscoring supplied; citations omitted)

This means that the creation of a retirement incentive package plan for an LGU would necessitate both a law authorizing the same for reasons such as reorganization, streamlining, etc., and express provisions negating its disbursement for the specific purpose of rewarding loyal and faithful service. Otherwise, said plan would run contrary to Section 28(b) of C.A. No. 186, as amended by R.A. No. 4968.

In *Abanto v. Board of Directors of the Development Bank of the Philippines*,[50] which cited *GSIS v. COA*, the Court also examined the provisions of the Early Retirement Incentive Program (ERIP) of the Development Bank of the Philippines (DBP)—which was created pursuant to DBP's desire "to attain cost[-]savings in its personnel budget."[51] Petitioners cite this case in support of their contention that payments made under PPCG's EVSIP is analogous to a government employee's separation pay, which is not mutually exclusive with retirement benefits in general and thus not tantamount to prohibited double compensation.

However, petitioners forget that Section 34[52] of Executive Order No. 81[53] (s. 1986), otherwise known as DBP's 1986 Revised Charter, as amended, expressly authorizes the existence of a supplementary retirement plan for DBP officials and employees as an exception to Section 28(b) of C.A. No. 186, as amended by R.A. No. 4968. ***There is no express exception stated anywhere in the Local Government Code of 1991 for officials and employees of LGUs***. Not even R.A. No. 5906,[54] otherwise known as the Puerto Princesa City Charter, provides for such an express exception for the PPCG. Thus, Petitioner's reliance on *Abanto* (or *DBP v. COA*, as they cite the case in their Petition) is grossly misplaced.

Also, petitioners forget that DBP's ERIP did ***not*** have the main objective of rewarding its employees for their loyal and faithful service. To

---

49 Supra note 44, at 600-601.

50 G.R. No. 207281, March 5, 2019, with the consolidated case of *DBP v. COA*, G.R. 210922, same date.

51 Id.

52 Section 34. *Separation Benefits.* — All those who shall retire from the service or are separated therefrom on account of the reorganization of the Bank under the provisions of this Charter shall be entitled to all gratuities and benefits provided for under existing laws and/or supplementary retirement plans adopted by and effective in the Bank; *Provided,* that any separation benefits and incentives which may be granted by the Bank subsequent to June 1, 1986, which may be in addition to those provided under existing laws and previous retirement programs of the Bank prior to the said date, for those personnel referred to in this section shall be funded by the National Government; *Provided, further,* that any supplementary retirement plan adopted by the Bank after the effectivity of this Charter shall require the prior approval of the Minister of Finance.

53 Signed on December 3, 1986.

54 Approved on June 21, 1969.

recall, the objectives of PPCG's EVSIP are threefold: 1) to adopt a streamlined organizational structure of the PPCG (though without any law as basis for said streamlining/reorganization); 2) to grant incentives for loyalty and satisfactory service in the PPCG; and 3) to encourage retireable employees to avail of the EVSIP's benefits and pursue other endeavors in the private sector.

Because of its second objective that is co-equal in importance to the others, PPCG's EVSIP already goes contrary to Section 28(b) of C.A. No. 186, as amended by R.A. No. 4968. And even if it has the first and third objectives, the presence of the second taints the entire Ordinance No. 438 with invalidity—again because it goes contrary to the said statutory provision. Indeed, combining the effects of the second and third objectives would create a separate early retirement benefits plan to reward loyal and faithful service of retiring PPCG personnel who avail of the EVSIP—which is definitely not in the spirit of a separation pay given pursuant to any reorganization or streamlining of the PPCG.

Even the language of the actual benefits to be received by PPCG employees partakes of the ***supplementary/augmenting*** nature of the EVSIP, since it is to be paid on top of other benefits under any local or national program, including but not limited to GSIS benefits. Crucially, the integers assigned to be multiplied to a PPCG employee's basic monthly salary and multiplied again with the number of years of service (*i.e.*, 1.5 for PPCG employees with 10-20 years of service, 1.8 for those with 21-30 years, and 2.0 for those with 31 years of service or more) are what characterize the EVSIP as a form of reward for a PPCG employee's loyalty and years of service. Had these integers been absent from the computation of a PPCG employee's benefits under the EVSIP, it would indeed simply be a form of separation pay comparable to the computations under renumbered Articles 298[55] and 299[56]

---

55 Article 298 [283] *Closure of Establishment and Reduction of Personnel.* — The employer may also terminate the employment of an employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by service a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

56 Article 299 [284]. *Disease as Ground for Termination.* — An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: *Provided,* That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

of Presidential Decree (P.D.) No. 442, otherwise known as the Labor Code of the Philippines as amended. However, that is not the case.

The Court must also note that even Section 9 of R.A. No. 6656[57] mandates that the separation pay of a government employee on account of reorganization shall ***only*** be "one (1) month salary for every year of service." It is important to note that this provision has no minimum years of service required. **Had the *Sangguniang Panlungsod* really intended for the EVSIP to be a form of separation pay for PPCG employees, there would not have been a minimum of 10 years of service for a PPCG employee to qualify for the same**. Thus, the EVSIP is clearly intended to reward long years of service in the PPCG.

Finally, Ordinance No. 438 does not even have a statement to the effect that it is being enacted pursuant to any streamlining or reorganization of the PPCG—just a general averment of the same is stated, *i.e.*, the general interest of adopting a more effective and efficient organizational structure for the LGU.

All in all, to the Court's mind, Ordinance No. 438 and Resolution No. 850-2010 of the *Sangguniang Panlungsod* of Puerto Princesa City are *ultra vires*. Respondent is correct in its citation of *Conte v. COA*[58] and *City of General Santos v. COA*[59] as basis for disallowing the payments under PPCG's EVSIP, since said payments are: 1) pegged on a beneficiary's years of service as a PPCG employee; 2) are a form of reward for their loyalty and service; and 3) are meant to augment or supplement a PPCG employee's benefits upon retirement.

With the aforementioned declaration that the legal basis for PPCG's EVSIP is *ultra vires*, the Court deems it proper to declare said basis (*i.e.* Ordinance No. 438, and consequently Resolution No. 850-201) as null and void. Consequently, the Court also finds appropriate the applicability of the operative fact doctrine in the instant Petition. In *De Agbayani v. Philippine National Bank*,[60] the Court enunciated the scope and logic of the doctrine, *viz.*:

> The decision now on appeal reflects the orthodox view that an unconstitutional act, for that matter an executive order or a municipal ordinance likewise suffering from that infirmity, cannot be the source of any legal rights or duties. Nor can it justify any official act taken under it. Its

---

57 AN ACT TO PROTECT THE SECURITY OF TENURE OF CIVIL SERVICE OFFICERS AND EMPLOYEES IN THE IMPLEMENTATION OF GOVERNMENT REORGANIZATION; approved on June 10, 1988.

58 Supra note 26.

59 Supra note 25.

60 148 Phil. 443 (1971).

> repugnancy to the fundamental law once judicially declared results in its being to all intents and purposes a mere scrap of paper. As the new Civil Code puts it: "When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws of the Constitution. It is understandable why it should be so, the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive.
>
> Such a view has support in logic and possesses the merit of simplicity. It may not however be sufficiently realistic. It does not admit of doubt that prior to the declaration of nullity, such challenged legislative or executive act must have been in force and had to be complied with. This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. This is merely to reflect awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.[61]

However, this Court must emphasize that the doctrine only applies to PPCG employees who received EVSIP benefits in good faith, as well as PPCG officials and employees who enacted or implemented the same also ***in good faith***. In *Araullo v. Aquino*,[62] whilst discussing the consequences and after-effects of declaring the Executive Department's Disbursement Acceleration Program (DAP) null and void, the Court declared in no uncertain terms that the operative fact doctrine "cannot apply to the authors, proponents and implementors of the DAP, unless there are concrete findings of good faith in their favor by the proper tribunals determining their criminal, civil, administrative and other liabilities."[63] The doctrine finds similar application in the present case where no finding of unconstitutionality has been rendered but where there is a finding of an ordinance's nullity due to: (1) its obvious *ultra vires* character and unsuitability as legal basis for the PPCG's EVSIP; and (2) its being contrary to a valid and subsisting statute enacted by the national legislature *i.e.* C.A. No. 186 (as amended by R.A. No. 4968).

To recall, respondent's findings and case files relative to its Decision No. 2020-100 dated January 16, 2020 have already been forwarded to the Office of the Ombudsman for the latter's investigation and case buildup. The

---

61 Id. at 447-448.
62 737 Phil. 457 (2014).
63 Id. at 625.

Court reiterates its deferral to the jurisdiction of the Office of the Ombudsman in preliminary investigations relative to the alleged misconduct of government officials—the results of which Respondent may use in its determination of whether or not to pursue Petitioners and others for the disbursed amount under PPCG's EVSIP, *i.e.*, ₱89,672,400.74.

On a final note, and for the guidance of respondent in future cases, it may help for it to explore closer coordination with the Department of Budget and Management in the review of annual or supplemental budgets ordinances of highly urbanized cities and other LGUs pursuant to Section 326[64] of the Local Government Code of 1991. This would enable respondent to be immediately apprised of appropriations contrary to national laws, and would give it enough time and opportunity to file the appropriate cases (by itself or through the OSG) before the appropriate trial courts for the declaration of their nullity. Respondent would thus complement its power to disallow such expenditures in a way that would preclude any notion that a piece of local legislation would be invalidated by a mere ND. Said NDs could either be the basis for respondent's cause of action against an erring LGU, or alternatively, said NDs could be issued after a trial court's determination of a local appropriation's nullity. Respondent may thus also give to Congress its appropriate recommendations to remedy the awkward situation of confronting local budgetary legislation that are contrary to national legislation and policy, but are nonetheless valid until set aside and expressly declared null and void by the courts in the proper proceedings.

WHEREFORE, the present Petition for *Certiorari* is hereby **DENIED** for lack of merit, and respondent Commission on Audit's Decision No. 2020-100 dated January 16, 2020 is hereby **AFFIRMED**. Ordinance No. 438 dated June 15, 2010 and Resolution No. 850-2010 dated June 21, 2010 of the *Sangguniang Panlungsod* of Puerto Princesa City are both hereby **DECLARED NULL AND VOID** for being *ultra vires* and contrary to Section 28(b) of Commonwealth Act No. 186, as amended by Republic Act No. 4968.

SO ORDERED.

SAMUEL H. GAERLAN
Associate Justice

---

64 Section 326. *Review of Appropriation Ordinances of Provinces, Highly-Urbanized Cities, Independent Component Cities, and Municipalities within the Metropolitan Manila Area.* — The Department of Budget and Management shall review ordinances authorizing the annual or supplemental appropriations of provinces, highly-urbanized cities, independent component cities, and municipalities within the Metropolitan Manila area in accordance with the immediately succeeding section.

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

MARVIC M.V.F. LEONEN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
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

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

(On official leave)
JAPAR B. DIMAAMPAO
Associate Justice

(On official business)
JOSE MIDAS P. MARQUEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify 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.

ALEXANDER G. GESMUNDO
Chief Justice

CERTIFIED TRUE COPY

MARIA LUISA M. SANTILLA
Deputy Clerk of Court and
Executive Officer
OCC-En Banc, Supreme Court