Republic of the Philippines
Supreme Court
Manila

EN BANC

MIGUEL C. WYCOCO, former Regional Manager of National Food Authority – Zamboanga Regional Office, ARACELY C. VALLEDOR, and ALL CONCERNED NATIONAL FOOD AUTHORITY REGION IX EMPLOYEES,

Petitioners,

- versus -

MILAGROS L. AQUINO and ESTRELLA B. AVILA, Audit Team Leader and Supervising Auditor, respectively, NILDA B. PLARAS, Director IV, Commission Secretary, COA, – Corporate Government Sector, Audit Group C, Zamboanga City,

Respondents.

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ERIC L. BONILLA and ALL CONCERNED OFFICIALS and EMPLOYEES OF THE NATIONAL FOOD AUTHORITY – AGUSAN DEL NORTE PROVINCIAL OFFICE,

Petitioners,

- versus -

G.R. No. 237874

G.R. No. 239036

Present:

PERALTA, *CJ*,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
GESMUNDO,
HERNANDO,
CARANDANG,

THE COMMISSION ON AUDIT,
Respondent.

LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.
DELOS SANTOS,
GAERLAN, and
ROSARIO, and
LOPEZ, J. *JJ.*

Promulgated:
February 16, 2021

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DECISION

ZALAMEDA, *J.*:

The governing bodies of government entities and agencies are bound to be subservient to laws, rules and regulations in granting benefits to its employees. While the release of benefits may be motivated by benevolent intentions, the non-observance of relevant rules and laws could create more harm than good to their employees in the long run.

The Case

Before this Court are the following consolidated petitions for *certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court, which are all premised on identical set of facts and raised similar issues and defenses:

1. **G.R. No. 237874**, seeking to annul and set aside the Decision[1] No. 2017-036, dated 16 February 2017 and Resolution[2] dated 26 October 2017 of the Commission on Audit (COA) Proper, affirming the propriety of the Notice of Disallowance (ND) No. 11-003-GOF(10) dated 13 September 2011 issued against the officials and employees of National Food Authority

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[1] *Rollo* (G.R. No. 237874), pp. 62-68; penned by Chairperson Michael G. Aguinaldo and Commissioners Jose A. Fabia and Isabel D. Agito.

[2] *Id.* at 84.

(NFA) Region IX, which disallowed the grant of the Food and Grocery Incentive (FGI) for the calendar year (CY) 2010; and,

2. **G.R. No. 239036**, assailing the Decision[3] No. 2017-038 of the COA Proper dated 16 February 2017 and Resolution[4] dated 26 October 2017 which affirmed the disallowance of the FGI given in CY 2012 to the officials and employees of the NFA-Agusan Del Norte Provincial Office (ADNPO) through the issuance of ND No. 2014-01(12).

Antecedents

In December 1998, then NFA Administrator Eduardo Nonato Joson (Administrator Joson) wrote a letter to former President Joseph Estrada (President Estrada), asking for the approval of the grant of food assistance and emergency allowance in the amount of Php7,000.00 to all NFA officials and employees.[5] President Estrada granted the said request.[6]

Five years thereafter, and during the term of former President Gloria Macapagal-Arroyo (President Arroyo), then Chief Presidential Management Staff Ricardo Saludo (Secretary Saludo) issued on 04 November 2003, a Memorandum addressed to the heads of government financial institutions (GFIs) and government-owned or controlled corporations (GOCCs) to exercise moderation when granting bonuses to their employees.[7] This prompted then NFA Administrator Arthur Y. Yap to request the Office of the Government Corporate Counsel (OGCC) to render an opinion on whether it was proper for the agency to grant its employees food/grocery incentives every Christmas season.[8] On 24 November 2003, the OGCC issued Opinion No. 21910 answering in the affirmative NFA's query. It opined that Secretary Saludo's Memorandum effectively recognized the authority of heads of GFIs and GOCCs to grant Christmas or year-end bonuses.[9]

Allegedly pursuant to these "presidential issuances" and OGCC opinion, the NFA Council approved Resolution No. 226-2K5 on 18 May 2005[10] authorizing the annual grant of FGI in the amount of Php20,000.00 to every NFA official and employee, payable in two (2) tranches.[11] In 2007,

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3 *Rollo* (G.R. No. 239036), pp. 91-100; penned by Chairperson Michael G. Aguinaldo and Commissioners Jose A. Fabia and Isabel D. Agito.
4 *Id.* at 116.
5 *Rollo* (G.R. No. 237874), p. 86.
6 *Id.*
7 *Rollo* (G.R. No. 239036), p. 118.
8 *Rollo* (G.R. No. 237874), p. 85.
9 *Id.*
10 *Id.* at 90.
11 *Id.* at 11.

then NFA Administrator Jessup P. Navarro issued Memorandum AO-2K&-02-024[12] encapsulating the Revised Guidelines, continuing the grant of the benefit in four (4) tranches.

Consequently, the annual release of FGI triggered COA's issuance of several NDs prohibiting the same, including those that are being challenged here in these consolidated petitions.

In **G.R. No. 237874,** the COA Audit Team Leader (ATL) and Supervising Auditor (SA) issued ND No. 11-003-GOF(10) disallowing the amount of Php660,000.00 representing the FGI granted to the officials and employees of NFA-Zamboanga Regional Office in CY 2020.[13] Meanwhile, ND No. 2014-01(12), the subject of **G.R. No. 239036**, was issued to disallow the grant of FGI to the officials and employees of NFA-ADNPO for CY 2012.[14] Petitioners were ordered to refund the amount of Php480,000.00.[15]

In **G.R. No. 237874,** the FGI was disallowed because its grant was found to have violated Republic Act No. (RA) 6758,[16] the 2010 General Appropriations Act (GAA), and DBM Budget Circular No. 16, series of 1998 (DBM BC No. 16, s. 1998). Meanwhile, in **G.R. No. 239036,** the ND was issued on the ground that the Governance Commission for Government-Owned and Controlled Corporation (GCG) had denied presidential imprimatur to the grant.[17] Among those found liable in **G.R. No. 239036** were the Provincial Manager and Senior Accounting Specialist of NFA-ADNPO as approving/certifying officers, and all officers and employees of NFA-ADNPO who received the benefit.[18]

Petitioners' respective appeals all suffered the same denial, prompting them to elevate the matter before the COA Proper.[19]

Rulings of the COA Proper

G.R. No. 237874

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[12] *Id.* at 91-93.
[13] *Id.* at 42-44.
[14] *Rollo* (G.R. No. 239036), p. 92.
[15] *Id.*
[16] *Compensation and Position Classification Act of 1989;* took effect on 01 July 1989.
[17] *Rollo* (G.R. No. 239036), p. 92.
[18] *Id.*
[19] *Rollo* (G.R. No. 237874), p. 6; *Rollo* (G.R. No. 239036), p. 5.

The COA Proper affirmed the disallowance of the FGI and ruled that nothing in the Memorandum of Secretary Saludo or the letter of Administrator Joson supports the conclusion that Presidents Estrada and Arroyo authorized the annual grant of FGI. While President Estrada did authorize the grant of a benefit, it was only for the Christmas Season of CY 1998. Further, petitioners failed to prove the existence of the requisites under Section 12 of RA 6758 allowing the continuous grant of additional benefits under specified conditions.

Dispelling petitioners' claim of good faith, the COA Proper held that contrary to the approving/certifying officers' assertion, their participation was not ministerial as it paved the way for the payment of FGI. On the other hand, the Deed of Undertaking executed by the payees was found antithetical to their claim of good faith.[20] Petitioners' motion for reconsideration was also denied.[21]

G.R. No. 239036

The COA Proper denied the petition for review filed by the affected employees of NFA-ADNPO for lack of merit. It held that contrary to petitioners' assertion, and notwithstanding the fact that the NFA Council is composed of members of the cabinet, NFA Council Resolution No. 226-2K5 could not be considered an act of the President. According to the COA Proper, the doctrine of political agency does not apply to instances where cabinet secretaries are acting on an *ex-officio* capacity such as those occupying seats in the NFA Council.

Also, the COA Proper observed that the alleged "presidential approvals" to the grant of FGI in 1998 and 2003 do not meet the requirements under DBM BC No. 16, s. 1998, which requires the issuance of an Administrative Order to signify the approval of the President. Ultimately, the COA Proper found the grant of FGI violative of Section 12 of RA 6758, as it was not among those deemed excluded in the standardized salary rates.

The COA proper also ruled the disallowance did not violate the principle of non-diminution of benefits more so as the recipients were never entitled to the same. Further, it agreed with the COA Corporate Government Sector 5 (COA CGS-5) that the good faith defense is unavailing:

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[20] *Rollo* (G.R. No. 237874), pp. 62-68.
[21] *Id.* at 84.

1) previous NDs were already issued against the grant of FGI; and 2) the employees signed an undertaking consenting to salary deduction should the FGI be disallowed.

Finally, the COA Proper sustained the approving and certifying officers' solidary liability considering the grant of FGI would not have been possible without their approval and certification.[22]

On 26 October 2017, the COA Proper denied petitioners' motion for reconsideration for failure to raise sufficient grounds to justify its grant.[23]

Issue

Petitioners in these consolidated petitions raise identical issues. They argue the annual grant of the FGI is sanctioned by the "presidential imprimaturs" of President Estrada in 1998 and President Arroyo, through Secretary Saludo, in 2003. They insist that these prior presidential authorizations were the legal basis for the issuance of NFA Council Resolution No. 226-2K5. Also, to disallow FGI, which had been traditionally given, would violate equity principles and considerations, as well as the principle of non-diminution of benefits. Finally, petitioners assert that neither the NFA officials who authorized the grant of FGI, nor the employees who merely received the same, should be required to return the disallowed amount on the ground of good faith.[24]

Thus, this Court is primarily tasked to determine whether or not: 1) the COA Proper committed grave abuse of discretion in sustaining the disallowance of petitioners' FGI; and 2) petitioners should be held liable in returning the disallowed amounts if the NDs are found to be proper.

Ruling of the Court

The petitions are partially granted.

The Court affirms the COA Proper's assailed Decisions in **G.R. No. 237874** and **G.R. No. 239036** by reason of the present petitions' failure to show grave abuse of discretion on the part of the COA Proper.

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[22] *Rollo* (G.R. No. 239036), pp. 94-99.
[23] *Id.* at 116.
[24] *Rollo* (G.R. No. 237874), pp. 14-29; *Rollo* (G.R. No. 239036), pp. 13-27.

Grave abuse of discretion requires proof from the party alleging it that the exercise of judgment of the tribunal being challenged was done capriciously and whimsically:

> By *grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.* The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility; it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. The burden lies on the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order.
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> In this case, the Court finds no grave abuse of discretion on the part of the COA in issuing the questioned NDs. The oft-repeated rule is that findings of administrative agencies are accorded not only respect but also finality when the decision or order is not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion.[25]

The COA Proper did not gravely abuse its discretion when, in both cases, it upheld the disallowance of the FGI. The COA Proper's decisions were supported by sufficient legal bases, negating any allegation that these were rendered in a whimsical, arbitrary, despotic, or capricious manner. Indeed, the impropriety of NFA's practice of granting FGI to its employees is not new to this Court. Petitioners even recognized that in *Escarez v. Commission on Audit*,[26] this Court ruled the grant of FGI improper for lack of presidential authorization, among others. We have no reason to depart from *Escarez* as the same amounts to *res judicata* and a conclusive and binding precedent to the impropriety of FGI. Thus:

> The philosophy behind [*res judicata*] prohibits the parties from litigating the same issue more than once. When a right or fact has been judicially tried and determined by a court of competent jurisdiction or an opportunity for such trial has been given, the judgment of the court, as long as it remains unreversed, should be conclusive upon the parties and those in privity with them. Verily, there should be an end to litigation by the same parties and their privies over a subject, once it is fully and fairly adjudicated.[27]

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[25] *Id.*

[26] G.R. No. 217818, 31 May 2016.

[27] *Stilianopulos v. City of Legaspi,* G.R. No. 133913, 12 October 1999, 374 Phil. 879 (1999) [Per J. Panganiban].

In our jurisdiction, *res judicata* is understood in two concepts: (1) bar by prior judgment, and (2) conclusiveness of judgment. The difference between them is straightforward: as compared to "bar by prior judgment," "conclusiveness of judgment" does not require identity of causes of action but only identity of parties.[28]

Thus, notwithstanding that the present petitions involve different NDs, and therefore, premised on a different cause of action, We find that the conclusiveness of *Escarez*'s judgment applies here. Further, the fact that *Escarez* was enunciated in an unsigned resolution would not prevent *res judicata* from setting in. In *Philippine Health Care Providers, Inc., v. Commissioner of Internal Revenue*,[29] We held that:

> It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become final. When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. But what is its effect on other cases?
>
> **With respect to the same subject matter and the same issues concerning the same parties, it constitutes res judicata. However, if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent.** Thus, in CIR v. Baier-Nickel, the Court noted that a previous case, CIR v. Baier-Nickel involving the same parties and the same issues, was previously disposed of by the Court thru a minute resolution dated February 17, 2003 sustaining the ruling of the CA. Nonetheless, the Court ruled that the previous case "ha(d) no bearing" on the latter case because the two cases involved different subject matters as they were concerned with the taxable income of different taxable years. (Emphasis supplied; citations omitted)

Indeed, **G.R. No. 237847** and **G.R. No. 239036** share the same subject matter and issues with *Escarez.* These cases involve the same benefit, FGI, which, in both instances were authorized by NFA Council Resolution No. 226-2K5. All the cases raise the same issue of the propriety of NFA's grant of FGI. Even the defenses raised by petitioners in these separate cases to prevent disallowance are also identical, *i.e.*, that the FGI enjoys presidential imprimatur and that it has been traditionally given. We also find identity of parties although in **G.R. No. 239036** the petition was filed by members of a regional office of the NFA different from those

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[28] *Samonte v. Domingo,* G.R. No. 237720, 05 February 2020 [Per J. A.B. Reyes, Jr.].
[29] G.R. No. 167330, 18 September 2009, 616 Phil. 387 (2009) [Per J Corona].

involved in *Escarez.* The principle of *res judicata* only requires substantial identity of parties premised on a common interest between them, to such an extent that a favorable decision to one would also favorably affect the other. In *Cruz v. Court of Appeals,*[30] We ruled:

> Only substantial identity is necessary to warrant the application of *res judicata*. The addition or elimination of some parties does not alter the situation. There is substantial identity of parties when there is a community of interest between a party in the first case and a party in the second case albeit the latter was not impleaded in the first case.

The substantial identity of the parties here, and the community of their interest with those involved in *Escarez,* could not be more clear. In both cases, petitioners are advocating for the legality of the grant of FGI, and are refusing to admit liability to return the disallowed amount. As far as petitioners in **G.R. No. 237847** are concerned, they were, in fact, also petitioners in *Escarez.* The only difference between these two cases is the year when the FGI grant was disallowed by COA and the NDs involved.[31]

At this juncture, it must be clarified though that the conclusiveness of *Escarez* reaches only the issue of the propriety of the disallowance of the FGI. It does not warrant a similar conclusion as to petitioners' liability to return the disallowed benefits they received. Only matters directly adjudged in *Escarez* are deemed conclusive here. To explain, in *Nabus v. Court of Appeals,*[32] We held:

> It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issues be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit; but the adjudication of an issue in the first case is not conclusive of an entirely different and distinct issue arising in the second. In order that this rule may be applied, it must clearly and positively appear, either from the record itself or by the aid of competent extrinsic evidence that the precise point or question in issue in the second suit was involved and decided in the first. And in determining whether a given question was an issue in the prior action, it is proper to look behind the judgment to ascertain whether the evidence necessary to sustain a

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[30] G.R. No. 164797, 13 February 2006, 517 Phil. 572 (2006) [Per J. Chico-Nazario].

[31] In *Ezcarez,* the petitioners who are officials and employees of NFA-Region IX were assailing the disallowance of FGI for CY 2011 and 2012.

[32] G.R. No. 91670, 07 February 1991 271 Phil. 768 (1991) [Per J. Regalado].

> judgment in the second action would have authorized a judgment for the same party in the first action.

Indeed, the issue of petitioners' liability under the specific NDs involved here were not directly adjudged in *Escarez*. As aptly observed by the esteemed Senior Associate Justice Perlas-Bernabe during the deliberations on this case, the issue of civil liability under ND No. 11-003-GOF(10) (assailed in G.R. No. 237874) and ND No. 2014-01(12) (assailed in G.R. No. 239036) is a different issue from the propriety of the disallowance. Moreover, *Escarez* was concerned with an entirely different set of NDs which means that it was based on different causes of action bearing their own factual peculiarities that may not necessarily apply in the present petitions. The foregoing clarification bears more importance considering that, as would be discussed later, the Court had already decreed a definitive set of rules in determining liability to return in COA disallowance cases, and that the civil liability of the petitioners in *Escarez* was determined under a different paradigm.

To repeat, this Court will not disturb the binding precedent set in *Escarez* insofar as the legality of the FGI is concerned. Nevertheless, so as to give a comprehensive discussion on the matter, this Court shall expound on the pronouncements made on said case.

The grant of the FGI did not enjoy any presidential approval

Section 12 of RA 6758[33] provides that, as a general rule, allowances due to government employees are deemed integrated into the new standardized salary rate save for these exceptions:

> (1) representation and transportation allowance;
>
> (2) clothing and laundry allowance;

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

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

(4) subsistence allowance of hospital personnel;

(5) hazard pay;

(6) allowance of foreign service personnel stationed abroad; and,

(7) such other additional compensation not otherwise specified in Section 12 as may be determined by the DBM.

Meanwhile, DBM BC No. 16, s. 1998 prohibits the grant of food, rice, gift checks, or any other form of incentives/allowances, except those authorized via Administrative Order by the Office of the President.[34] Similarly, Administrative Order No. 103 (AO 103)[35] suspended the grant of new or additional benefits to officials and employees of GOCCs except for (a) Collective Negotiation Agreement (CNA) Incentives, and (b) those expressly provided by presidential issuance.[36]

It is apparent that FGI is not among the enumerated exceptions in Section 12 of RA 6758, and therefore, applying the general rule, should be deemed included in the standardized salary. The only way to justify its separate grant is to show that: (a) it's an allowance sanctioned by the DBM, or, (2) it was authorized by the President. With respect to the allowances excepted by DBM, of particular relevance was the issuance of DBM-Corporate Compensation Circular 10 (DBM-CCC 10) to implement RA 6758. Sections 5.4, 5.5 and 5.6 of DBM-CCC 10 provided as follows:

5.4.The following allowances/fringe benefits which were authorized to GOCCs/GFIs under the standardized Position Classification and Compensation Plan prescribed for each of the five (5) sectoral groupings of GOCCs/GFIs pursuant to P.D. No. 985, as amended by P.D. No. 1597, the Compensation Standardization Law in operation prior to R.A. No. 6785, and to other related issuances are not to be integrated into the basic salary and allowed to be continued after June 30, 1989 only to incumbents of positions who are authorized and actually receiving such

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[34] *Bureau of Fisheries and Aquatic Resources (BFAR) Employees Union, Regional Office No VII, Cebu City v. Commission on Audit,* G.R. No. 169815, 13 August 2008, 584 Phil. 132 (2008) [Per CJ. Puno].

[35] *Directing the Continued Adoption of Austerity Measures in the Government*; issued on 31 August 2004.

[36] SEC. 3. All NGAs, SUCs, GOCCs, GFIs and OGCEs, whether exempt from Salary Standardization Law or not, are hereby directed to: x x x
x x x
(b) Suspend the grant of new or additional benefits to full-time officials and employees and officials, except for (i) Collective Negotiation Agreement (CNA) Incentives which are agreed to be given in strict compliance with the provisions of the Public Sector Labor-Management Council Resolutions No. 04, s. 2002 and No. 2, s. 2003, and (ii) those expressly provided by presidential issuance; x x x.

allowances/benefits as of said date, at the same terms and conditions provided in said issuances.

5.4.1 Representation and Transportation Allowance (RATA);

5.4.2 Uniform and Clothing Allowance;

5.4.3 Hazard Pay as authorized by law;

5.4.4 Honoraria/additional compensation for employees on detail with special projects or inter-agency undertakings;

5.4.5 Honoraria for services rendered by researchers, experts and specialists who are of acknowledged authorities in their fields of specialization;

5.4.6 Honoraria for lecturers and resource persons/speakers;

5.4.7 Overtime pay as authorized by law;

5.4.8 Laundry and subsistence allowance for marine officers and crew on board GOCCs/GFIs owned vessels and used in their operations, and of hospital personnel who attend directly to patients and who by nature of their duties are required to wear uniforms;

5.4.9 Quarters Allowance of officials and employees who are entitled to the same;

5.4.10 Overseas, Living Quarters and other allowances presently authorized for personnel stationed abroad;

5.4.11 Night Differential of personnel on night duty;

5.4.12 Per Diems of members of the governing Boards of GOCCs/GFIs at the rate prescribed in their respective Charters;

5.4.13 Flying Pay of personnel undertaking aerial flights;

5.4.14 Per Diems/Allowances of Chairman and Members/Staff of collegial bodies and Committees; and

5.4.15 Per Diems/Allowances of officials and employees on official foreign and local travel outside of their official station.

5.5 The following allowances/fringe benefits authorized to GOCCs/GFIs pursuant to the aforementioned issuances are not likewise to be integrated into the basic salary and allowed to be continued only for incumbents of positions as of June 30, 1989 who are authorized and actually receiving such allowances/benefits as of said date, at the same terms and conditions prescribed in said issuances.

5.5.1 Rice Subsidy;

5.5.2 Sugar Subsidy;

5.5.3 Death Benefits other than those granted by the GSIS;

5.5.4 Medical/dental/optical allowances/benefits;

5.5.5 Children's allowance;

5.5.6 Special Duty Pay/Allowance;

5.5.7 Meal Subsidy;

5.5.8 Longevity Pay; and

5.5.9 Teller's Allowance.

5.6 Payment of other allowance/fringe benefits and all other forms of compensation granted on top of basic salary, whether in cash or in kind, not mentioned in Sub-Paragraphs 5.4 and 5.5 above shall continue to be not authorized. Payment made for such unauthorized allowances/fringe benefits shall be considered as illegal disbursements of public funds.

Nonetheless, petitioners never alleged, and there is no indication in the records, that the DBM signed off to the grant of the FGI. Petitioners only insist that its grant was backed by presidential approvals.

Contrary, however, to petitioners' assertion, the alleged "presidential imprimatur" of President Estrada could not be used as legal basis for the annual release of FGI. As reference, the Letter dated 08 December 1998 addressed to President Estrada, where the continuing authority to FGI was supposedly found, is hereby reproduced:

HIS EXCELLENCY JOSEPH EJERCITO ESTRADA
President
Republic of the Philippines
Malacañang, Manila

Dear Mr. President:

This refers to the attached approved granting of **Food Assistance and Emergency Allowance to all employees of the Office of the President in the amount of Seven Thousand Pesos (₱7,000.00)**.

Executive Order No. 2 placed the NFA under the Office of the President, upholding our mandate on food security and food stabilization. Likewise, Executive Order No. 22 tasked our agency to extend our services to the people through timely intervention on non-grains commodity trading in

time of crisis or calamity. To this end, we would like to ensure your excellency that we will do our best.

Hence, as a sense of gratitude to the hardwork and dedication by our employees, I personally see fit that the Food Assistance and Emergency Allowance given to the employees of the Office of the President be extended to NFA officials and employees.

In the spirit of the Yuletide season and **the thought of alleviating the economic status of our employees even in this Christmas season**, we hope for your consideration and approval.

Again, MERRY CHRISTMAS AND A HAPPY NEW YEAR.

EDUARDO NONATO N. JOSON
Administrator
(Sgd.)

Approved/~~Disapproved~~

JOSEPH EJERCITO ESTRADA
President
(Sgd.)[37]

To begin with, Administrator Joson was seeking approval for the grant of the Food Assistance and Emergency Allowance (FAEA), which, in Our eyes, is an entirely different benefit with a significantly smaller amount. Even if the FAEA eventually evolved to FGI, still, the tenor of the letter suggests that the FAEA is to be granted only for the Christmas Season of 1998. There is nothing that would warrant an interpretation that President Estrada authorized the yearly grant of FGI. To ascribe such view to the mere presence of President Estrada's signature in the letter would be to stretch one's imagination and read something in the letter that was clearly not there.

On the same boat was President Arroyo's purported presidential approval allegedly contained in the Memorandum by Secretary Saludo addressed to the heads of GFIs and GOCCs, which is also reproduced here:

MEMORANDUM

THE HEADS
GOVERNMENT FINANCIAL INSTITUTIONS
GOVERNMENT OWNED OR CONTROLLED CORPORATIONS

FROM The Cabinet Secretary
SUBJECT GIVING OF CHRISTMAS/YEAR-END BONUS

[37] *Supra* at note 5.

DATE 04 November 2003

The Cabinet, at its meeting with the Executive Secretary held today, **discussed the proposal to grant the national employees the amount of not more than P5,000 as year-end bonus in addition to the regular year-end/Christmas/13th month pay consisting of their basic salary plus P5,000 in cash only**. During the discussion, it was mentioned that these national government employees might be disgruntled if other employees of state entities received extremely high bonuses.

In view thereof, **the Cabinet agreed to request the heads of the government financial institutions and the government-owned or controlled corporations to moderate their granting of bonuses to their employees.**

Although the Cabinet Members are aware that finances are corporate board matters, they appeal to the good sense of the Boards on this particular case.

Thank you for your continued cooperation.

RICARDO L. SALUDO
(Sgd.)[38]

We cannot see anything in the above memorandum to convince Us that President Arroyo intended to give continuing authority to NFA to grant its employees FGI on a yearly basis. The purpose of the memorandum is clear and simple: to remind heads of GFIs and GOCCs not to give their employees exorbitant amounts by way of bonuses. The memorandum did not even authorize the release of a specific benefit, bonus or allowance. It spoke of a "proposal to grant" a benefit, which, again, was entirely different from FGI, and of an obvious smaller amount. Nevertheless, nothing categorical was given, much less authorized perpetually by virtue of the memorandum.

Still, petitioners argue that the memorandum recognized the authority of the heads of GOCCs to give benefits such as FGI. To bolster their claim, petitioners present the opinion of the OGCC expressing the same view. Even if We accept this as correct, the "recognition" in the memorandum does not carry unbridled authority in NFA's favor to violate the clear import of DBM BC No. 16, s. 1998 and AO 103, and ignore the need of an authorization from the President. The NFA, particularly the NFA Council, is

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[38] *Rollo* (G.R. No. 239036), p.118. Emphasis supplied.

not being deprived of its corporate power to determine the necessity of giving additional benefits. It is only being asked to follow said law and regulation to the letter, and seek first the required presidential authority before implementing the grant of the FGI. To be sure, PD 1770,[39] which enumerated the powers and functions of the NFA Council, provides:

> Section 7. *Additional Powers, Functions and Exemptions.* In addition to the powers, functions and exemptions of the Authority under P.D. No. 4, as amended, the Authority shall have the following powers, functions and exemptions:
>
> x x x
>
> (f) **To establish and or re-structure its own internal organization and to fix the remunerations, emoluments, allowances and other fringe benefits of its officers and employees, subject to the provisions of pertinent compensation law and regulations.** x x x (Emphasis supplied)

NFA employees have no vested right to receive FGI despite it being traditionally given to them

Customs, practice, and tradition regardless of length of time, so long as it lacked legal anchor, could not produce any vested right.[40] The belief that *National Tobacco Administration v. Commission on Audit*[41] is applicable here is erroneous. Aside from their invocation of the principle of equity, the present petitions share no similarity with the said case. *National Tobacco* involved a proper determination of whether **financial assistance, *vis-à-vis*, allowances, regularly given to employees prior to the enactment of RA 6758** is covered by the second paragraph of Section 12, which states that, "[s]uch other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized."[42] When this Court answered in the affirmative, We then explained that the incumbents already acquired vested right to receive the financial assistance, and therefore, should be continued. **No such determination is required from us here.**

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[39] *Reconstituting the National Grains Authority to the National Food Authority, Broadening Its Functions and Powers and for Other Purposes*; the law took effect on 14 January 1981.

[40] *Metropolitan Waterworks and Sewerage System v. Commission on Audit*, G.R. No. 195105, 21 November 2017 [Per J. Bersamin].

[41] G.R. No. 119385, 05 August 1999, 370 Phil. 793 (1999) [Per Justice Purisima].

[42] *Supra* at note 31.

NFA Resolution No. 226-2K5 failed to clarify whether the grant of the FGI is in the nature of an "allowance" or "financial assistance." Notwithstanding, that inquiry is unimportant. Even if We treat the FGI as financial assistance, the NFA started granting the same to its employees only in 2005, which is subsequent to the enactment of RA 6758. Therefore, the ruling in *National Tobacco* does not apply. Particularly enlightening is Our ruling in *Metropolitan Waterworks and Sewerage System v. Commission on Audit,*[43] where We explained:

> Clearly, the Court has been very consistent in construing the second sentence in the first paragraph of Section 12, *supra*, as prescribing July 1, 1989 as the qualifying date to determine whether or not an employee was an *incumbent* and *receiving* the non-integrated remuneration or benefit *for purposes of entitling the employee to its continued grant.* **Stated differently, those allowances or fringe benefits (whether RATA or other benefits) that have not been integrated into the standardized salary are allowed to be continued only for *incumbents* of positions as of July 1, 1989 and who were actually *receiving* said allowances or fringe benefits as of said date.**
>
> It is basic enough that the erroneous application and enforcement of the law by public officers do not estop the Government from subsequently making a correction of the errors. Practice, without more, no matter how long continued, cannot give rise to any vested right if it is contrary to law. (Emphasis supplied)

Neither is there merit to petitioners' claim that the disallowance of FGI diminished their existing benefits. Aside from alleging it, diminution of benefits should be proved by sufficient evidence.[44] Here, what petitioners' offered are mere allegations without any evidence to support their claim.

The Court's ruling here does not apply to governmental bodies enjoying fiscal autonomy

At this juncture, the Court clarifies that the main thrust of Our foregoing disquisition, i.e., the need to secure the approval of the President or the DBM before granting new or additional benefits, shall only apply to government agencies whose power to fix compensation and allowances of its officers and employees are subject to certain limitations provided by law and budgetary issuances.[45] It does not cover agencies enjoying fiscal autonomy under the 1987 Constitution such as the Judiciary, the Civil

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[43] *Supra* at note 38.

[44] *See Philippine Charity Sweepstakes v. Ma. Gracia M. Pulido-Tan,* G.R. No. 216776, 19 April 2016, 785 Phil. 266 (2016) [Per J. Peralta].

Service Commission, the Commission on Audit, the Commission on Elections, and the Office of the Ombudsman. In *Bengzon v. Drilon,*[46] the Court ruled that these bodies require fiscal flexibility in the discharge of their constitutional duties:

> As envisioned in the Constitution, the fiscal autonomy enjoyed by the Judiciary, the Civil Service Commission, the Commission on Audit, the Commission on Elections, and the Office of the Ombudsman contemplates a guarantee of full flexibility to allocate and utilize their resources with the wisdom and dispatch that their needs require. It recognizes the power and authority to levy, assess and collect fees, fix rates of compensation not exceeding the highest rates authorized by law for compensation and play plans of the government and allocate and disburse such sums as may be provided by law or prescribed by them in the course of the discharge of their functions.
>
> Fiscal autonomy means freedom from outside control. If the Supreme Court says it needs 100 typewriters but DBM rules we need only 10 typewriters and sends its recommendations to Congress without even informing us, the autonomy given by the Constitution becomes an empty and illusory platitude.
>
> The Judiciary, the Constitutional Commissions, and the Ombudsman must have the independence and flexibility needed in the discharge of their constitutional duties. The imposition of restrictions and constraints on the manner the independent constitutional offices allocate and utilize the funds appropriated for their operations is anathema to fiscal autonomy and violative not only of the express mandate of the Constitution but especially as regards the Supreme Court, of the independence and separation of powers upon which the entire fabric of our constitutional system is based.

The NFA officials who authorized the FGI, are not liable to return the disallowed amount. Nevertheless, the individual officers and employees who benefited from the grant should return what they wrongfully received

With the issue of the propriety of the FGI's disallowance now put to rest, We now turn our attention in determining the liabilities of the petitioners under the NDs.

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[45] *See Philippine Health Insurance Corporation v. Commission on Audit,* G.R. No. 213453, 29 November 2016, 801 Phil. 427 (2016) [Per J. Peralta].

[46] G.R. No. 103524, A.M. No. 91-8-225-CA, 15 April 1992, 284 Phil. 245 (1992) [Per J. Gutierrez, Jr.].

Very recently in *Madera v. Commission on Audit (Madera),*[47] this Court had the opportunity to provide a concrete set of guidelines in determining the liability to return of government officials and employees affected by disallowances of benefits and compensation declared valid by this Court (*Madera* Rules). The guidelines provide:

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

A. Approving/certifying officers

[47] G.R. No. 244128, 08 September 2020 [Per J. Caguioa].

Madera explained that pursuant to Sections 38[48] and 39[49] of the Administrative Code, government officials who approved or certified the grant of disallowed benefits could only be civilly liable to return the amount thereof when "the public officers performed his official duties with bad faith, malice, or gross negligence."[50] The rationale behind this rule is that public officers enjoy the presumption of regularity in the performance of their official duties. Good faith and the observance of the diligence of a good father, therefore, remain as valid mechanisms of avoidance of liability.

Meanwhile, this Court accepted the following circumstances as badges of good faith that may be considered in favor of government officers who, in the performance of their official functions, approved or certified the disallowed benefit:

> x x x For one to be absolved of liability the following requisites [may be considered]: (1) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent disallowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality.[51]

Based on the foregoing, We find in these cases the existence of badges of good faith on the part of the certifying/approving officers and hence, they should be exonerated from their civil liability to return the disallowed amount under Sections 38 and 39 of the Administrative Code. The fact that the FGI had been traditionally given, while it may not justify its legality, propriety, and continued grant, is among the recognized circumstances showing good faith. Also, the OGCC's opinion indicate that NFA Council Resolution No. 225-2K6 was issued under the mistaken, yet innocent, belief that the NFA Council had authority to authorize the FGI's annual grant.

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[48] SECTION 38.Liability of Superior Officers. — (1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.
x x x
(3) A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence, or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.

[49] SECTION 39. Liability of Subordinate Officers. — No subordinate officer or employee shall be civilly liable for acts done by him in good faith in the performance of his duties. However, he shall be liable for willful or negligent acts done by him which are contrary to law, morals, public policy and good customs even if he acted under orders or instructions of his superiors.

[50] *Supra* at note 45.

[51] J. Leonen, Separate Concurring Opinion, *Madera v. Commission on Audit;* p. 8.

Finally, Our ruling in *Escarez*[52] was only promulgated in 2016. Thus, when the subject FGI was released in 2010 and 2012, there was still no precedent disallowing a similar case in jurisprudence.

B. Officers or employees as recipients

If the approving/certifying officers' liability is based on the provisions of the Administrative Code, *Madera* is instructive that the liabilities of payees or recipients of disallowed benefits is based on the Civil Code provisions on *solutio indebiti* or unjust enrichment. This Court views the receipt by payees of disallowed benefits as one by mistake, thus creating an obligation on their part to return the same. In her Separate Concurring Opinion, Justice Perlas-Bernabe explained:

> In the same case, the Court observed that "[t]he principle of *solutio indebiti* applies where (1) a payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause." These requisites clearly obtain in the case of passive recipients who, by mistake of the erring approving/authorizing officer, were able to unduly receive compensation from disbursements later disallowed by the COA. Indeed, from a strictly technical point of view, there would be no legal duty to pay compensation which contravenes or lacks basis in law. Hence, as a general rule, passive recipients, notwithstanding their good faith, should be liable to return disallowed amounts they have respectively received on the basis of *solutio indebiti*. To note, this same general rule must equally apply to approving/authorizing officers who have not acted in bad faith, with malice, or with gross negligence because while they may not be held civilly liable under Section 38 (1), Chapter 9, Book I of the Administrative Code, they are still subject to return the amounts unduly received by them on the basis of *solutio indebiti*. In this respect, they may also be considered as passive recipients.
>
> At this juncture, it is crucial to underscore that good faith cannot be appreciated as a defense against an obligation under *solutio indebiti* as it is "'forced' by operation of law upon the parties, not because of any intention on their part but in order to prevent unjust enrichment." Moreover, it is discerned that the complete absolution of passive recipients from liability may indeed significantly reduce the funds to be recovered by the COA and as a result, cause great losses, or "fiscal leakage," to the detriment of the government. In other words, if non-return of passive recipients is the norm, then the COA's ability to recover may be greatly hampered. This skewed paradigm recognized in earlier jurisprudence should not anymore be propagated.

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[52] *Supra* at note 26.

The Court, nevertheless, recognized exceptions that could excuse payees from returning what they erroneously received. The exceptions are: (1) those given in consideration of actual services rendered under Rule 2c of the *Madera* Rules; (2) undue prejudice; (3) social justice considerations; and (4) other *bona fide* exceptions as the Court may determine on a case to case basis pursuant to Rule 2d.

In *Madera,* the Court excused the payees from returning what they received because doing so would cause them undue prejudice. Thus:

> As for the payees, the Court notes that the COA Proper already excused their return; hence, they no longer appealed. In any case, while they are ordinarily liable to return for having unduly received the amounts validly disallowed by COA, the return was properly excused not because of their good faith but because it will cause undue prejudice to require them to return amounts that were given as financial assistance and meant to tide them over during a natural disaster.

After *Madera's* promulgation, the Court applied, or refused to apply, in the following cases, the exceptions found in Rules 2c and 2d:

1. *Velasquez, et al. v. Commission on Audit*[53] – the rice subsidy received by the payees was considered a reasonable amount of financial assistance that may be excused under Rule 2d. Meanwhile, the return of *Kalampasan Award* was pardoned pursuant to Rules 2c and 2d. It was considered as granted in compensation of services rendered, and to require its return 16 years after its grant would cause undue prejudice to its recipients.

2. *Power Sector Assets and Liabilities Management Corporation (PSALM) v. Commission on Audit*[54] – the employees of PSALM were required to return the expanded Medical Assistance Benefits (MAB) granted to them. The Court found no connection between the said benefits and the functions performed by the employees. No undue prejudice will also be suffered by the employees if they return the expanded benefits unjustifiably extended to their dependents in the form of dermatological and dental treatments.

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53 G.R. No. 243503, 15 September 2020 [Per J. J.C. Reyes, Jr.].
54 G.R. No. 205490 & 218177, 22 September 2020 [per J. Lazaro-Javier, *En Banc*].

3. *Social Security System (SSS) v. Commission on Audit*[55] – the Court did not exonerate the rank-and-file employees of SSS from returning the Collective Negotiations Agreement (CNA) Incentives they received as none of the exceptions under Rule 2c and 2d are present in this case. The incentives were not related to the employees' functions, and it cannot be said that undue prejudice will result in requiring the recipient employees to return the disallowed amount. Conversely, the Court held that it is the government that would be prejudiced if the recipients will not return what they unduly received.

4. *De Guzman et al., v. Commission on Audit*[56] – the centennial bonus granted by the Baguio Water District to its officers and employees was not considered as given in consideration of services rendered; thus, it was ordered to be returned. The Court also remarked that "grant[s] that contravene the unambiguous letter of the law cannot be foregone on social justice considerations."

5. *Philippine Health Insurance Corporation (PhilHealth) v. Commission on Audit*[57] – while the benefit granted by PhilHealth to its employees was denominated as "Efficiency Gift," the Court found no indication that the disallowed amount was genuinely intended as compensation for services rendered by the recipients, and therefore, should be returned.

6. *National Transmission Corporation v. Commission on Audit*[58] – the Court held that none of the exceptions under Rules 2c and 2d were present. The payees were ordered to return the amounts they received on the basis of *solutio indebiti.*

It is clear from the above-mentioned cases that, **post-*Madera*, the Court had been strictly applying the general rule that passive recipients or payees should return what they received by mistake, save for very rare instances when it found compelling reason to apply the exceptions.** Nevertheless, so as to give a categorical ruling with regard to the application of Rule 2c and 2d of the *Madera* Rules, the Court promulgated Its resolution to the motion for reconsideration in *Abellanosa v. Commission on Audit.*[59] It was pointed out that these rules should be applied only to truly exceptional cases and they should not be haphazardly applied or else they would

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55 G.R. No. 244336, 06 October 2020 [Per J. Lazaro-Javier, *En Banc*].
56 G.R. No. 245274, 13 October 2020 [Per J. Lazaro-Javier, *En Banc*].
57 G.R. No. 235832, 03 November 2020 [Per J. Inting, *En Banc*].
58 G.R. No. 244193, 10 November 2020 [Per J. Delos Santos, *En Banc*].
59 G.R. No. 185806, 17 November 2020.

effectively nullify the general rule, which is to return disallowed public expenditures. Thus, Rule 2c should be limited to benefits that are supported by factual and legal bases, but were still disallowed due to procedural infirmities. By factual basis, the Court meant "that there must be actual work performed and that the benefit or incentive bears a clear, direct, and reasonable relation to the performance of such official work or functions." Meanwhile, in applying Rule 2d, the Court, speaking thru J. Perlas-Bernabe, elucidated:

> The same considerations ought to underlie the application of Rule 2d as a ground to excuse return. In *Madera,* the Court also recognized that the existence of undue prejudice, social justice considerations, and other *bona fide* exceptions, as determined on a case-to-case basis, may also negate the strict application of *solutio indebiti.* The exception was borne from the recognition that in certain instances, the attending facts of given case may furnish an equitable basis for the payees to retain the amounts they had received. While 2d is couched in broader language as compared to Rule 2c, the application of Rule 2d should always remain true to its purpose: it must constitute a *bona fide* instance which strongly impels the Court to prevent a clear inequity arising from a directive to return. Ultimately, it is only in highly exceptional circumstances, after taking into account all factors (such as the nature and purpose of the disbursement, and its underlying conditions) that the civil liability to return may be excused. For indeed, it was never the Court's intention for Rule 2c and 2d of *Madera* to be a jurisprudential loophole that would cause the government fiscal leakage and debilitating loss.

The importance of stringently applying the general rule rather than the exceptions was underscored by the Court in this wise:

> It is important to rein in Rules 2c and 2d of the *Madera* Rules on Return because their application has a direct bearing on the resulting amount to be returned by erring approving/authorizing officers civilly held liable under Section 38, in relation to Section 43, of the Administrative Code. In *Madera,* the Court explained that when recipients are excused to return disallowed amounts for the reason that they were genuinely made in consideration of services rendered, or for some *bona fide* exception determined by the Court on a case to case basis, the erring approving/authorizing officers' solidary obligation for the disallowed amount is net of the amounts excused to be returned by the recipients (net disallowed amount). The justifiable exclusions of these amounts signals that no proper loss should be recognized in favor of the government, and thus, reduces the total amount to be returned to the extent corresponding to such exclusions. Accordingly, since there is a justified reason excusing return, the State should not be allowed a double recovery of these amounts from the erring public officials and individuals notwithstanding their bad faith, malice or gross negligence. Needless to say even if the civil liability becomes limited in this sense, these erring public officers and those who have confederated and conspired with them remain subject to the

> appropriate administrative and criminal actions which may separately and distinctly pursued against them.

When the Court applied the foregoing clarification to the payees in *Abellanosa,* It ruled that the "dislocation allowance" received by them ought to have been allowed under Rule 2c where it not for its lack of proper legal basis. Nevertheless, the payees were excused under Rule 2d of the *Madera* Rules. The Court considered the fact that "the benefits have a clear, direct, and reasonable connection to the actual performance of the petitioners' official work and functions," and that the recipients suffered actual displacement from work. Moreover, in the main decision, the Court already recognized the payees' "professed dedication to their duties despite being sent to some hazardous areas in order to implement the housing programs of the NHA." These circumstances were considered exceptional, thus, warranting the application of Rule 2d.

As it stands, the Court reiterates Its policy to strictly apply the general rule that passive recipients are required to return the amounts they received as benefits when the same were correctly and validly disallowed by COA. With this in mind, the Court holds that the payees in the present case should be required to return the amounts they received. The grant of the FGI cannot be considered as genuinely given in consideration of actual services rendered as it lacked legal and factual bases. As discussed, the FGI contravened RA 6758, AO 103, and DBM BC No. 16, s. 1998. Also, the benefit had no direct and reasonable connection to the functions performed by the employees because the FGI was intended to be given as additional benefit or bonus during Christmas Season.

We also do not find any highly exceptional reason to apply 2d of the *Madera* Rules. The circumstances surrounding the case are bereft of any indication that the employees will be prejudiced or will suffer injustice apart from the fact that they are being made to pay and part with money that they should not have received in the first place. On the contrary, the Court finds that the employees were aware of the likelihood of the FGI's disallowance, and therefore, could not be unduly prejudiced by its return. Their execution of an undertaking agreeing to return the FGI thru salary deduction supports this conclusion.

At this point, We echo Justice Mario V. Lopez's judicious remarks during the deliberations on the present petitions: that while the Court is willing to take into account equitable circumstances and social justices considerations in exempting payees in COA disallowance cases, these are available only to those who are unquestionably deserving. Thus, from this

point forward, the Court expects that petitions for *certiorari* filed by employees seeking exoneration from returning disallowed benefits would clearly allege, prove, and demonstrate within the four corners of their petition, the highly exceptional circumstances obtaining their case. The Court would simply not provide refuge based on conjectures and surmises.

WHEREFORE, the Court disposes of the following consolidated cases in this manner:

1. **G.R. No. 237874** is **PARTIALLY GRANTED**. The Decision No. 2017-036 dated 16 February 2017 of respondent Commission on Audit affirming Notice of Disallowance No. 11-003-GOP(10) in the amount of Php660,000.00 is **AFFIRMED with MODIFICATION**. The approving/certifying officers are exonerated from their solidary liability to return the disallowed amount. Meanwhile, all passive recipients of the Food and Grocery Incentive disallowed under Notice of Disallowance No. 11-003-GOP(10), including the approving/certifying officials who had received the disallowed amounts in their capacity as payees, are ordered to refund the amount they received.

2. **G.R. No. 239036** is **PARTIALLY GRANTED**. The Decision No. 2017-038 dated 16 February 2017 of the COA Proper affirming Notice of Disallowance No. 2014-01(12) in the amount of Php480,000.00 is **AFFIRMED with MODIFICATION.** The approving/certifying officers are exonerated from their solidary liability to return the disallowed amount. Meanwhile, all passive recipients of the Food and Grocery Incentive disallowed under Notice of Disallowance No. 2014-01(12), including the approving/certifying officials who had received the disallowed amounts in their capacity as payees, are ordered to refund the amount they received.

SO ORDERED.

RODIL V. ZALAMEDA
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice

Please see Concurring Opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
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

MARIO V. LOPEZ
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to the 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.

DIOSDADO M. PERALTA
Chief Justice

Certified True Copy
ANNA-LI R. PAPA-GOMBIO
Deputy Clerk of Court En Banc
OCC En Banc, Supreme Court