

ON THE BACK PAY LAW

(Speech delivered by Mr. Jose Eres-tain, Chief Law Officer, at the Con-ference of the Provincial and City Auditors held at Manila on October 21, 1948.)

Hon. Auditor General Agregado,
Hon. Deputy Auditor General Joven
Fellow co-workers and friends:

Before I dwell upon the subject assigned to me, I would like to take the opportunity to pay tribute to a man who, by his courage and patriotism, has stood firm in upholding the Constitutional powers and prerogatives of his office and made possible the realization of the desire of the framers of the Constitution that we shall have an independent General Auditing Office. I refer, gentlemen, to our beloved Chief, Auditor General Manuel Agregado. (Applause) Mr. Agregado is a man of broad human understanding, and yet he is not easily swayed in the exercise of his judgment. As Chief of our Office, he is like a father to us, but at the same time he is a strict disciplinarian. To the claimants and the general public, he is fair, reasonable and amicable, but at the same time he is firm in his decisions and courageous in maintaining his convictions. Thus we find in him all the qualities of a real watchdog of the treasury: FAIRNESS, FIRMNESS, and COURAGE. The other day, I was talking to an authority on the Constitution, Dr. Jose M. Aruego, the author of "Know Your Constitution" and "The Framing of the Constitution". Dr. Aruego told me that in order that the provisions of the Constitution regarding the independence of the General Auditing Office may be fully complied with, it is required that the Auditor General should be courageous to assert his Constitutional powers and prerogatives against possible incursions from other departments of the Government. He said that a "yes-man" Auditor will spell doom to this Constitutional ideal. He believes that Mr. Agregado is the

right man to maintain that ideal because of his firmness and courage in upholding his constitutional powers and observing faithfully his duties. Ever since he assumed office about two years ago, his service record is replete with examples that he has tried his best to maintain the Constitutional ideal. But eternal vigilance is the price of liberty; and so he continues to fight for that ideal. Added to this task is the task left to him by the late President Roxas that he should work for the restoration of the high prestige of the General Auditing Office. In this two-fold task, in this herculean task of fighting for the independence and high prestige of our Office, our beloved Chief certainly deserves our unswerving loyalty and wholehearted cooperation. I appeal to you, gentlemen, I appeal to each and every one of you, to unite as one man in restoring and maintaining the high prestige of our Office. (Applause) I may be the youngest officer among you, I was only your messenger about twenty-five years ago, but let me at least voice this plea for unity, for official and personal harmony among us so that we can all measure up to the expectations of the framers of the Constitution in connection with our duties and at the same time we shall be contributing fully to President Quirino's program of restoring the confidence of the people in the Government. Gentlemen, let us show to our Chief not only in words but in deeds that we are solidly behind him in this two-fold task of maintaining the independence and high prestige of our Office. And let us not forget his advice to us that we cannot be really loyal to him unless we are first loyal to the principles for which our Office stands. (Prolonged applause)

Permit me now to greet you all, especially the provincial and city auditors. In the name of the staff in the Central Office, I wish to extend to you our most cordial welcome in your com-

ing to visit us and in this short conference where we will have a sort of family reunion and talk things over.

The subject "On The Back Pay Law" has been allotted to me, and although I don't profess to be an expert on the subject, I would, however, endeavor to point out the distinctive features of the law and try to clear some of the doubts on the interpretation to be given to its provisions.

It must be remembered that the Back Pay Law was passed by Congress only during its last *sine die* session; some of its provisions were adopted only after the conference committees of both chambers of Congress had met to thresh out certain divergent views and decided to adopt a certain compromise. As a matter of fact, some of the discussions on the bill lasted until the late morning hours of the *sine die* session and the impression gathered is that the bill was adopted with the understanding that any defect which may have been overlooked during the rush discussions will be remedied by subsequent legislations.

I understand that even Senator Magalona who is the author of the Back Pay Law considers some of the provisions thereof as unjust and defective and he has publicly announced that he will introduce the necessary amendments in the forthcoming session of Congress. But, however defective the law may be, until the same is amended, we have to interpret its provisions not in a way as to substitute our judgment on what should have been the law but to give force to the law as it presently stands. In other words, we cannot and we have no power to introduce administrative legislations to correct the defects of the law; until the law is amended and such amendment shall have become effective, the law however unreasonable or unjust it may be, must be applied and enforced under the principle of *dura lex sed lex*.

I shall now proceed to give some pointers on the provisions of the Back Pay Law (Republic Act No. 304), in the light of the decisions rendered by this Office and the opinions handed

down by the Secretary of Justice:

I. *Who are entitled to back pay?*
Under Section 1 of Republic Act No. 304, only the following persons are entitled to back pay:

a. Officers, employees and persons under contract with the Government of the Commonwealth of the Philippines, who were serving in the classified or unclassified service of the national, provincial, city or municipal governments on December 8, 1941;

b. Officers, employees and persons under contract with the University of the Philippines who were in the service thereof on December 8, 1941;

c. Officers, employees and persons under contract with corporations owned or controlled by the Government who were in the service thereof on December 8, 1941;

d. Officers and employees of the free local civil governments, provincial and municipal, duly organized for purposes of resistance against the enemy;

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provided, they do not come under any of the following groups who are not entitled to back pay:

a. Officers and enlisted men of the U. S. Army and commissioned officers of the U. S. Coast & Geodetic Survey and the U.S.P.H. and Quarantine Service on detail with the Commonwealth Government;

b. Officers and employees found guilty after due trial of treason, espionage, or any act constituting disloyalty to the Government of the Philippines or of the U. S. at any time during the enemy occupation of the Philippines, unless pardoned or granted amnesty;

c. Officers and employees who received salaries from the Refugee Government of the Commonwealth of the Philippines in the U.S.A. or elsewhere.

Important points to be remembered:

1. That the applicant—officer or employee must be in the service of the National, provincial, city or municipal governments or the University of the Philippines or of government-owned or controlled corporations on December 8, 1941. Those who were appointed subsequent thereto, altho they were actually serving on December 31, 1941, or on the date of enemy occupation of the province or city concerned, are not entitled to back pay.

2. The term "elsewhere" used in the phrase "officers and employees who received salaries from the Refugee Government of the Commonwealth of the Philippines in the U.S.A. or elsewhere" refers to Australia or to a place outside the Philippines which was made a temporary seat of the Refugee Government; it does not include Corregidor nor the Visayas nor Mindanao where the Commonwealth Government continued to function for sometime after the fall of Manila. Hence, officers and employees of the National, provincial, city or municipal governments, who received salaries from the Commonwealth Government in Corregidor where the seat of the Commonwealth Government was locat-

ed for sometime are not excluded from receiving back pay (Martinez case).

II. *Who are the unclassified employees entitled to back pay?* Section 671 of the Administrative Code enumerates the officials and employees embraced within the unclassified civil service, among whom are: (1) elective officials, (2) secretaries of provincial boards, (3) laborers. Municipal secretaries are also considered as embraced in the unclassified civil service. (Opinion of the Commissioner of Civil Service)

Elective provincial and municipal officials are entitled to back pay only up to the date of the expiration of their term (December 31, 1943) as they were not entitled to hold over as already decided by our Supreme Court. Secretaries of provincial boards are entitled to back pay for the whole period of enemy occupation as they were entitled to hold office until their successors shall have been appointed (Sec. 2098, Adm. Code). Municipal secretaries are also entitled

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to back pay for the whole period of enemy occupation because under Section 2178 of the Administrative Code, they were entitled to continue in office until their successors shall have been appointed.

With respect to laborers, the following points should be remembered:

1. Laborers occupying positions in the appropriation act, budget or included in the plantilla of personnel who were in the service on December 8, 1941, are entitled to back pay, regardless of the period of service rendered prior thereto.

2. Laborers in specific projects the appropriations for which were to last only up to a certain period who were in the service on December 8, 1941, are entitled to back pay up to the date such projects were supposed to have been terminated, regardless of the period of service rendered prior to that date.

In both classes of laborers, the six-months period of service prior to December 8, 1941, prescribed in our previous memorandum circulars as a requisite to entitle them to the three months' advance pay and the two months' gratuity under Administrative Order No. 27 and Executive Order No. 83, is not a requisite for the back pay; as long as they were appointed on or before December 8, 1941, and were in the service on said date, they are entitled to back pay (Opinion of the Secretary of Justice, dated August 12, 1948).

3. Laborers who would have been laid off before the liberation of the city or province concerned by virtue of the completion of their work, are entitled to back pay only up to the time they would have been laid off, minus the deductible amounts mentioned in Section 7 of the Back Pay Law, viz.: three months' advance pay, two months' gratuity and any back pay received or to be received from the U. S. Government. This is also true with employes whose functions were supposed to terminate on a specified time. Thus, in an actual case in Pampanga, the

back pay of deputy assessors who were employed in 1941 in connection with the general revision of assessment in said province which project was supposed to last until June 30, 1942, only, was allowed to be computed up to said date only. (Tuazon case)

4. A laborer, permanent or temporary, who was in the service on December 8, 1941, but who resigned between December 9, 1941 and December 31, 1941 (in the case of laborers in Manila) or the date of occupation of the city or province by the enemy, is not entitled to back pay (Opinion of the Sec. of Justice, dated Aug. 12, 1948). This is also true with officials and employees similarly situated.

III. *What period should the back pay cover?* The law explicitly states that in the case of offices situated in the provinces, the back pay shall be computed from the day of the occupation of each province or city by the Japanese up to the date of the liberation thereof, the date of occupation or liberation of the capital to be deemed as the date of the occupation or liberation of the province, respectively. Please note that the law says up to the date of the liberation. In computing the back pay, the date of the liberation of the city or province should, therefore, be included. Under our Memorandum Circular No. 61, the dates of occupation and liberation of the various cities and provinces as certified by the Secretary of the Interior shall be considered as the official dates of occupation or liberation to be followed in computing the back pay.

IV. *Are retired officials, employees or laborers entitled to back pay?* It depends. If the official, employee or laborer concerned was retired effective a date prior to the date of the enemy occupation of the city or province concerned, he is no longer entitled to back pay, because in such case he was no longer in the service during the period covered by the enemy occupation and, therefore, could not have received salary even if the war did not break out. Thus, in the case of a laborer of the City of Manila who was retired

under Act 4183 effective January 1, 1942, this Office ruled that said laborer is not entitled to back pay (Montalbo case, City of Manila). If the official, employee or laborer was retired, say under Act 2589, or Act 4183, as of a date subsequent to that of the occupation of the city or province concerned, he will be entitled to back pay only up to the day immediately preceding the effective date of his retirement.

V. *Are amounts received by pre-war officials or employees from the local civil governments organized for purposes of resistance against the enemy for services rendered thereto deductible from his back pay in his capacity as such pre-war official or employee?* In an opinion rendered by the Secretary of Justice, dated August 3, 1948 (Opinion No. 216) it was ruled that such amounts are not proper deductible items from the back pay. This opinion has been applied and followed by this Office in the cases submitted to us for decision.

VI. In connection with the back pay of teachers, the following points have already been clarified:

a. Substitute teachers are entitled to back pay but only up to the expiration of their substitutionary appointments if fixed, or up to the date the regular incumbents were expected to return to duty. (2nd Ind. Aug. 20, 1948)

b. In computing the back pay of temporary and emergency teachers, vacation periods falling within the period for which back pay is claimed should be deducted. (Idem; par. 9, Mem. Cir. No. 61, dated Aug. 9, 1948)

VII. *Are allowances (for quarters, subsistence, laundry, uniform) to be included in the back pay?* Paragraph 7 of our Memorandum Circular No. 61, provides that allowances for quarters, subsistence and laundry shall not be considered in the back pay claim. This rule is not, however, absolute and a distinction should be made between allowances which are by specific provision of law allowed to be commuted and those where there is no authority for the commutation of the same. In

the first case, if the officers and employees whose positions are specifically provided with allowances were on January 1, 1942, or on the date of the enemy occupation of the city or province concerned as the case may be, actually receiving amounts as *outright commutation* of the allowance pursuant to an existing law, such amount will be considered in the computation of the back pay. On the other hand, if the allowance was not given as an outright commutation but the corresponding amount was to be given to the owner of the building, house, occupied by the officer or employee or to the person rendering the service (laundry or making the uniform) in the absence of government quarters or facilities for the purpose, such allowance should not be included in the back pay claim. Thus, in the case of the Property Officer of the Bureau of Public Works, whose position was specifically provided with quarters in the appropriation act, but where there was no specific provision of law allowing the commutation thereof, and was merely granted a "house allowance" of P50.00 a month, pending the availability of government quarters, the said amount to be paid to the owner of the house occupied by him, the aforesaid amount of P50.00 was not allowed by this Office to be included in his back pay claim. (Villaflor case, B. P. W.)

VIII. *It is the policy of our Office not to render opinion on hypothetical cases.* It is, therefore, requested that Provincial and City Auditors avoid sending queries to the Central Office which are not based on actual facts. We further request you to apprise government officials and private persons of this policy of our Office and advise them to refrain from sending queries to us for decision which are based on merely hypothetical cases. As it is now, our Law Department is flooded with such hypothetical cases, thus resulting in considerable delay in the dispatch of more important matters.

IX. *Provincial and City Auditors are requested to see to it that before sending papers to the Central Office*
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for designation of next of kin, all the necessary supporting papers required under the Manual of Instructions to Treasurers are submitted. Our Law Department now and then has to return requests for designation of next of kin because some of the essential papers or evidence are lacking. For example, in cases where the deceased official or employee died single this Office often finds the evidence of survivorship or non-survivorship of the following persons in the order of succession provided in the Civil Code, is either entirely wanting or incomplete:

1. Duly acknowledged natural or legally adopted children;
2. Ascendants;
3. Brothers and sisters (of whole full blood or half blood) and nephews and nieces;
4. Relatives (collaterals) within the sixth civil degree.

Since the presence of duly acknowledged natural and legally adopted children will entirely alter the order of succession or affect the shares of the legitimate children in the back pay of the deceased officer or employee, requests for designation of next of kin should invariably be supported by evidence establishing the presence or absence of such duly acknowledged natural or legally adopted children. In case there are such legally adopted or acknowledged natural children, proof or evidence of such acknowledgment by any of the forms recognized by the Civil Code and the adoption papers should be submitted.

In cases where natural children are claiming for designation of next of kin, proof of acknowledgment of said children should be supported by any of the following documents:

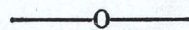
1. Record of birth of said children as shown by the signed reports of birth by the alleged deceased parents.
2. By will.
3. By a public document, e.g. income tax return on file with the Bureau of Internal Revenue, statement designating beneficiaries of the Insur-

ance (G.S.I.S.) policy.

In conclusion, I wish to express my heartfelt thanks to all of you for your forbearance and consideration in listening to me and I hope I have made clearer to you at least some obscure provisions of the Back Pay Law. The Law Department welcomes any request for further clarification on this matter, or on any other matter which you may want to take up with us. I thank you.

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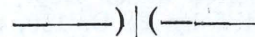
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