

RE: REQUEST OF MUSLIM EMPLOYEES IN THE DIFFERENT COURTS IN ILIGAN CITY (RE: OFFICE HOURS)

A.M. NO. 02-2-10-SC. December 14, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

In their Letter dated November 19, 2001 addressed to Executive Judge Valerio M. Salazar, Regional Trial Court of Iligan City, several Muslim employees in the different courts in the said city request that they be allowed to enjoy the following privileges:

- to hold office hours from 7:30 a.m. to 3:30 p.m. without lunch break or coffee breaks during the month of Ramadan;
- to be excused from work from 10:00 a.m. to 2:00 p.m. every Friday (Muslim Prayer Day) during the entire calendar year.

Judge Salazar forwarded the said letter-request to the Office of the Court Administrator (OCA). Judge Salazar expressed his conformity with the first request, i.e., allowing them to hold office from 7:30 a.m. to 3:30 p.m. without any break during the month of Ramadan. However, he expressed some misgivings about the second request, i.e., excusing them from work from 10:00 a.m. to 2:00 p.m. every Friday during the entire calendar year.

In support of their requests, the Muslim employees invoke Presidential Decree (P.D.) No. 291[1] as amended by P.D. No. 322[2] enacted by then President Ferdinand E. Marcos. The avowed purpose of P.D. No. 291 was to reinforce national unity by recognizing Muslim holidays and making them part of our national holidays. Section 2 thereof, as amended by P.D. No. 322, provides that the following are recognized Muslim holidays:

- Eid-ul-Fitr (Hariraya Puasa) - which falls on the 1[st] day of the lunar month of Shawwal commemorating the end of the fasting season;
- Eid-ul-Adha (Hariraya Hajj) - which falls on the 10[th] day of the 12[th] Lunar month of Zul Hajj;
- Mauledan Nabi - Birthday of Prophet Mohammad (P.B.U.H), which falls on the 12[th] day of the 3[rd] Lunar month of Rabiul-Awwal;
- Lailatul Isra Wal Miraj - (Ascension) which falls on the 27[th] day of the 8[th] Lunar month of Rajjab;
- Muharram (Ashura) - which falls on the 10[th] Lunar month of Muharram; and
- Amon Jaded (New Year) - which falls on the 1[st] day of the 1[st] Lunar month of Muharram.

Muslims employees in the government are excused from reporting to office during these holidays in order that they may be able to properly observe them.

Section 3 of the same law, as amended by P.D. No. 322, further provides that:

Sec. 3. (a) During the fasting season on the month of Ramadan, all Muslim employees in the national

government, government-owned or controlled corporations, provinces, cities, municipalities and other instrumentalities shall observe office hours from seven-thirty in the morning (7:30 a.m.) to three-thirty in the afternoon (3:30 p.m.) without lunch break or coffee breaks, and that there shall be no diminution of salary or wages, provided, that the employee who is not fasting is not entitled to the benefit of this provision.

(b) Regulations for the implementation of this section shall be issued together with the implementing directives on Muslim holidays.

Pursuant thereto, the Civil Service Commission (CSC) promulgated Resolution No. 81-1277 dated November 13, 1981 which states in part:

- During "Ramadan" the Fasting month (30 days) of the Muslims, the Civil Service official time of 8 o'clock to 12 o'clock and 1 o'clock to 5 o'clock is hereby modified to 7:30 A.M. to 3:30 P.M. without noon break and the difference of 2 hours is not counted as undertime;
- During Friday, the Muslim pray day, Muslims are excused from work from 10 o'clock in the morning to 2 o'clock in the afternoon.

Moreover, in its Resolution No. 00-0227 dated January 26, 2000, the CSC clarified that the term "Friday" in the above resolution is not limited to the Fridays during the month of Ramadan, but refers to "all Fridays of the calendar year." However, in order not to run afoul of Section 5,[3] Rule XVII of the Omnibus Rules Implementing Book V of Executive Order (E.O.) No. 292[4] which enjoins civil servants to render public service not less than eight hours a day or forty (40) hours a week, the CSC prescribes the adoption of a flexible working schedule to accommodate the Muslims' Friday Prayer Day subject to certain conditions, e.g., the flexible working hours shall not start earlier than 7:00 a.m. and end not later than 7:00 p.m.[5]

In the Resolution dated October 1, 2002, the Court required the Court Administrator to study the matter. In compliance therewith, Court Administrator Presbitero J. Velasco, Jr. recommends that the Muslim employees in the Judiciary be allowed to hold flexible office hours from 7:30 a.m. to 3:30 p.m. without break during the month of Ramadan. Further, that they be excused from work from 10:00 a.m. to 2:00 p.m. every Friday to allow them to attend the Muslim Prayer Day. However, to compensate for the lost hours, they should be required to observe flexible working schedule which should start from 7:00 a.m. to 10:00 a.m. and from 2:00 p.m. to 7:00 p.m. every Friday. In that way, the working hours mandated by the civil service rules is complied with.

The recommendation of the Court Administrator with respect to the matter of allowing the Muslim employees in the Judiciary to hold flexible office hours from 7:30 a.m. to 3:30 p.m. without break during the month of Ramadan is well taken. The same has statutory basis in Section 3 (a) of P.D. No. 291, as amended by P.D. No. 322, which categorically states that "[d]uring the fasting season in the month of Ramadan, all Muslim employees in the national government, government-owned or controlled corporations, provinces, cities, municipalities and other instrumentalities shall observe office hours from seven-thirty in the morning (7:30 a.m.) to three-thirty in the afternoon (3:30 p.m.) without lunch break or coffee breaks, and that there shall be no diminution of salary or wages ..."

The Court, however, is constrained to deny for lack of statutory basis the request of the Muslim employees to be excused from work from 10:00 a.m. to 2:00 p.m. every Friday to allow them to attend the Muslim Prayer Day. As correctly observed by Atty. Edna Diño, Chief, Office of the Court Attorney, in her Report dated May 13, 2005, the CSC exceeded its authority insofar as it declared in Resolution No. 81-1277 and Resolution No. 00-0227 that Muslim employees are excused from work from 10:00 a.m. to 2:00 p.m. every Friday subject to certain conditions. CSC Resolution No. 81-1277 was purportedly issued pursuant to Sections 2 and 5 of P.D. No. 291, as amended by P.D. No. 322, but neither of the two decrees mention "Friday, the Muslim Prayer Day" as one of the

recognized holidays.

The Court is not unmindful that the subject requests are grounded on Section 5, Article III of the Constitution:

No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil and political rights.

This provision contains two aspects: (1) the non-establishment clause; and (2) the free exercise clause. The subject requests are based on the latter and in interpreting this clause (the free exercise clause) embodied in the Constitution, the Court has consistently adhered to the doctrine that:

The right to religious profession and worship has a two-fold aspect, viz., freedom to believe and freedom to act on one's beliefs. The first is absolute as long as the belief is confined within the realm of thought. The second is subject to regulation where the belief is translated into external acts that affect the public welfare.[6]

Justice Isagani A. Cruz explained these two concepts in this wise:

(1) Freedom to Believe

The individual is free to believe (or disbelieve) as he pleases concerning the hereafter. He may indulge his own theories about life and death; worship any god he chooses, or none at all; embrace or reject any religion; acknowledge the divinity of God or of any being that appeals to his reverence; recognize or deny the immortality of his soul – in fact, cherish any religious conviction as he and he alone sees fit. However absurd his beliefs may be to others, even if they be hostile and heretical to the majority, he has full freedom to believe as he pleases. He may not be required to prove his beliefs. He may not be punished for his inability to do so. Religion, after all, is a matter of faith. "Men may believe what they cannot prove." Every one has a right to his beliefs and he may not be called to account because he cannot prove what he believes.

(2) Freedom to Act on One's Beliefs

But where the individual externalizes his beliefs in acts or omissions that affect the public, his freedom to do so becomes subject to the authority of the State. As great as this liberty may be, religious freedom, like all other rights guaranteed in the Constitution, can be enjoyed only with a proper regard for the rights of others. It is error to think that the mere invocation of religious freedom will stalemate the State and render it impotent in protecting the general welfare. The inherent police power can be exercised to prevent religious practices inimical to society. And this is true even if such practices are pursued out of sincere religious conviction and not merely for the purpose of evading the reasonable requirements or prohibitions of the law.

Justice Frankfurter put it succinctly: The constitutional provision on religious freedom terminated disabilities, it did not create new privileges. It gave religious liberty, not civil immunity. Its essence is freedom from conformity to religious dogma, not freedom from conformity to law because of religious dogma.[7]

The Court recognizes that the observance of Ramadan and the Friday Muslim Prayer Day is integral to the Islamic faith. However, while the observance of Ramadan and allowing the Muslim employees in the Judiciary to hold flexible office hours from 7:30 a.m. to 3:30 p.m. without any break during the month of Ramadan finds support in Section 3 (a) of P.D. No. 291, as amended by P.D. No. 322, there is no such basis to excuse them from work from 10:00 a.m. to 2:00 p.m. every Friday, the Muslim Prayer Day, during the entire calendar year.

On the other hand, the need of the State to prescribe government office hours as well as to enforce them uniformly to all civil servants, Christians and Muslims alike, cannot be disregarded. Underlying Section 5,[8] Rule XVII of the Omnibus Rules Implementing Book V of E.O. No. 292 is the interest of the general public to be assured of continuous government service during office hours every Monday through Friday. The said rule enjoins all civil

servants, of whatever religious denomination, to render public service of no less than eight hours a day or forty (40) hours a week.

To allow the Muslim employees in the Judiciary to be excused from work from 10:00 a.m. to 2:00 p.m. every Friday (Muslim Prayer Day) during the entire calendar year would mean a diminution of the prescribed government working hours. For then, they would be rendering service twelve (12) hours less than that required by the civil service rules for each month. Further, this would encourage other religious denominations to request for similar treatment.

The performance of religious practices, whether by the Muslim employees or those belonging to other religious denominations, should not prejudice the courts and the public. Indeed, the exercise of religious freedom does not exempt anyone from compliance with reasonable requirements of the law, including civil service laws.

In fine, the remedy of the Muslim employees, with respect to their request to be excused from work from 10:00 a.m. to 2:00 p.m. every Friday during the entire calendar year, is legislative, which is to ask Congress to enact a legislation expressly exempting them from compliance with the prescribed government working hours.

ACCORDINGLY, the Court resolved to:

- GRANT the request to allow the Muslim employees in the Judiciary to hold office hours from 7:30 a.m. to 3:30 p.m. without break during the month of Ramadan pursuant to Section 3 (a) of Presidential Decree No. 291, as amended by Presidential Decree No. 322; and
- DENY for lack of legal basis the request that the Muslim employees in the Judiciary be excused from work from 10:00 a.m. to 2:00 p.m. every Friday, the Muslim Prayer Day, during the entire calendar year.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.

[1] Recognizing Muslim Holidays and Providing for the Implementation, September 12, 1973.

[2] Amending Section 2 of Presidential Decree No. 291 and Inserting a New Section on the Regulation of Office Hours in the Month of Ramadan thereby Changing the Numbers of All Subsequent Sections, October 28, 1973.

[3] The provision reads:

Sec. 5. Officers and employees of all departments and agencies except those covered by special laws shall render not less than eight hours of work a day for five days a week or a total of forty hours a week, exclusive of time for lunch. As a general rule, such hours shall be from eight o'clock in the morning to twelve o'clock noon and from one o'clock to five o'clock in the afternoon on all days except Saturdays, Sundays and Holidays.

[4] Administrative Code of 1987.

[5] Civil Service Commission Resolution No. 00-0227, supra. These conditions are:

1)

Heads of departments, offices and agencies shall have the authority to approve office working hours, provided that in such working hours, officials and employees shall render not less than eight hours a day for five days a week for a total of forty hours;

2)

The flexible working hours shall not start earlier than 7:00 o'clock in the morning and end later than 7:00 o'clock in the evening; hence, the public is still assured of the core working hours of eight o'clock in the morning to five o'clock in the afternoon;

3)

The public must be assured of a continuous service during the period of 12:00 noon to 1:00 o'clock in the afternoon;

4)

The Flexible Working Hours adopted by the official or employee shall thereafter be his regular working hours which cannot be occasionally or periodically changed at his convenience;

5)

In the exigency of the service, working days may also be altered to include Saturdays and Sundays, provided that employees who work on such days may choose compensatory days-off during the weekdays, provided that the Saturday and Sunday are regular workdays and not cases of overtime;

Such working day may be applicable to offices with frontline services such as Consular offices abroad, Bureau of Internal Revenue, Bureau of Customs, Social Security System, Government Service Insurance System, and other offices that issue licenses, permits, clearances, or which process documents needed to have access to other services.

6)

A report of flexible working hours adopted by the department, office or agency shall be submitted to the Civil Service Commission within thirty (30) days of its implementation;

7)

Habitual absenteeism and tardiness shall hereafter be considered as grave offenses.

[6] ISAGANI A. CRUZ, CONSTITUTIONAL LAW 174 (1995), citing *Cantwell v. Connecticut*, 310 U.S. 296 (1940). Also cited in *Iglesia Ni Cristo v. Court of Appeals*, 259 SCRA 529 (1996); *Ebralinag v. Division Superintendent of Schools of Cebu*, *supra*.

[7] *Id.* at 174-175.

[8] *Supra*.

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