

CHRISTINE JOY CAPIN-CADIZ, PETITIONER, VS. BRENT HOSPITAL AND COLLEGES, INC., RESPONDENT.

G.R. No. 187417. February 24, 2016

Ponente: REYES, J.

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REYES, J.:

This is a petition for review on certiorari[1] under Rule 45 of the Rules of Court assailing the Resolutions dated July 22, 2008[2] and February 24, 2009[3] of the Court of Appeals (CA) in CA-G.R. SP No. 02373-MIN, which dismissed the petition filed by petitioner Christine Joy Capin-Cadiz (Cadiz) on the following grounds: (1) incomplete statement of material dates; (2) failure to attach registry receipts; and (3) failure to indicate the place of issue of counsel's Professional Tax Receipt (PTR) and Integrated Bar of the Philippines (IBP) official receipts.

Antecedent Facts

Cadiz was the Human Resource Officer of respondent Brent Hospital and Colleges, Inc. (Brent) at the time of her indefinite suspension from employment in 2006. The cause of suspension was Cadiz's Unprofessionalism and Unethical Behavior Resulting to Unwed Pregnancy. It appears that Cadiz became pregnant out of wedlock, and Brent imposed the suspension until such time that she marries her boyfriend in accordance with law.

Cadiz then filed with the Labor Arbiter (LA) a complaint for Unfair Labor Practice, Constructive Dismissal, Non-Payment of Wages and Damages with prayer for Reinstatement.[4]

Ruling of the Labor Tribunals

In its Decision[5] dated April 12, 2007, the LA found that Cadiz's indefinite suspension amounted to a constructive dismissal; nevertheless, the LA ruled that Cadiz was not illegally dismissed as there was just cause for her dismissal, that is, she engaged in premarital sexual relations with her boyfriend resulting in a pregnancy out of wedlock.[6] The LA further stated that her "immoral conduct x x x [was] magnified as serious misconduct not only by her getting pregnant as a result thereof before and without marriage, but more than that, also by the fact that Brent is an institution of the Episcopal Church in the Philippines operating both a hospital and college where [Cadiz] was employed." [7] The LA also ruled that she was not entitled to reinstatement "at least until she marries her boyfriend," to backwages and vacation/sick leave pay. Brent, however, manifested that it was willing to pay her 13th month pay. The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered, ordering [Brent] to pay [Cadiz] 13th month pay in the sum of Seven Thousand Nine Hundred Seventy & 11/100 Pesos (P7,970.11).

All other charges and claims are hereby dismissed for lack of merit.

SO ORDERED.[8]

Cadiz appealed to the National Labor Relations Commission (NLRC), which affirmed the LA decision in its Resolution[9] dated December 10, 2007. Her motion for reconsideration having been denied by the NLRC in its

Resolution[10] dated February 29, 2008, Cadiz elevated her case to the CA on petition for certiorari under Rule 65.

Ruling of the CA

The CA, however, dismissed her petition outright due to technical defects in the petition: (1) incomplete statement of material dates; (2) failure to attach registry receipts; and (3) failure to indicate the place of issue of counsel's PTR and IBP official receipts.[11] Cadiz sought reconsideration of the assailed CA Resolution dated July 22, 2008 but it was denied in the assailed Resolution dated February 24, 2009.[12] The CA further ruled that "a perusal of the petition will reveal that public respondent NLRC committed no grave abuse of discretion amounting to lack or excess of jurisdiction x x x holding [Cadiz's] dismissal from employment valid." [13]

Hence, the present petition. Cadiz argues that -

I

THE HONORABLE [NLRC] GRAVELY ABUSED ITS DISCRETION WHEN IT HELD TFIAT [CADIZ'S] IMPREGNATION OUTSIDE OF WEDLOCK IS A GROUND FOR THE TERMINATION OF [CADIZ'S] EMPLOYMENT[14]

II

THE [NLRC] COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT UPHELD THE DISMISSAL OF [CADIZ] ON THE GROUND THAT THE INDEFINITE SUSPENSION WAS VALID AND REQUIRED [CADIZ] TO FIRST ENTER INTO MARRIAGE BEFORE SHE CAN BE ADMITTED BACK TO HER EMPLOYMENT[15]

III

RESPONDENT [NLRC] GRAVELY ABUSED ITS DISCRETION WHEN IT DENIED [CADIZ'S] CLAIM FOR BACKWAGES, ALLOWANCES, SICK LEAVE PAY, MATERNITY PAY AND MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES[16]

IV

THE [CA] MISPLACED APPLICATION OF THE MATERIAL DATA RULE RESULTING TO GRAVE ABUSE OF DISCRETION WHEN IT DISMISSED THE APPEAL[17]

Cadiz contends, among others, that getting pregnant outside of wedlock is not grossly immoral, especially when both partners do not have any legal impediment to marry. Cadiz surmises that the reason for her suspension was not because of her relationship with her then boyfriend but because of the resulting pregnancy. Cadiz also lambasts Brent's condition for her reinstatement - that she gets married to her boyfriend - saying that this violates the stipulation against marriage under Article 136 of the Labor Code. Finally, Cadiz contends that there was substantial compliance with the rules of procedure, and the CA should not have dismissed the petition.[18]

Brent, meanwhile, adopts and reiterates its position before the LA and the NLRC that Cadiz's arguments are irrational and out of context. Brent argues, among others, that for Cadiz to limit acts of immorality only to extra-marital affairs is to "change the norms, beliefs, teachings and practices of BRENT as a Church institution of the x x x Episcopal Church in the Philippines." [19]

Ruling of the Court

Ordinarily, the Court will simply gloss over the arguments raised by Cadiz, given that the main matter dealt with by the CA were the infirmities found in the petition and which caused the dismissal of her case before it. In view, however, of the significance of the issues involved in Cadiz's dismissal from employment, the Court will resolve the petition including the substantial grounds raised herein.

The issue to be resolved is whether the CA committed a reversible error in ruling that: (1) Cadiz's petition is dismissible on ground of technical deficiencies; and (2) the NLRC did not commit grave abuse of discretion in upholding her dismissal from employment.

Rules of procedure are mere tools designed to facilitate the attainment of justice

In dismissing outright Cadiz's petition, the CA found the following defects: (1) incomplete statement of material dates; (2) failure to attach registry receipts; and (3) failure to indicate the place of issue of counsel's PTR and IBP official receipts.

Rule 46, Section 3 of the Rules of Court states the contents of a petition filed with the CA under Rule 65, viz, "the petition shall x x x indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received." The rationale for this is to enable the CA to determine whether the petition was filed within the period fixed in the rules.[20] Cadiz's failure to state the date of receipt of the copy of the NLRC decision, however, is not fatal to her case since the more important material date which must be duly alleged in a petition is the date of receipt of the resolution of denial of the motion for reconsideration,[21] which she has duly complied with.[22]

The CA also dismissed the petition for failure to attach the registry receipt in the affidavit of service.[23] Cadiz points out, on the other hand, that the registry receipt number was indicated in the petition and this constitutes substantial compliance with the requirement. What the rule requires, however, is that the registry receipt must be appended to the paper being served.[24] Clearly, mere indication of the registry receipt numbers will not suffice. In fact, the absence of the registry receipts amounts to lack of proof of service.[25] Nevertheless, despite this defect, the Court finds that the ends of substantial justice would be better served by relaxing the application of technical rules of procedure.[26] With regard to counsel's failure to indicate the place where the IBP and PTR receipts were issued, there was substantial compliance with the requirement since it was indicated in the verification and certification of non-forum shopping, as correctly argued by Cadiz's lawyer.[27]

Time and again, the Court has emphasized that rules of procedure are designed to secure substantial justice. These are mere tools to expedite the decision or resolution of cases and if their strict and rigid application would frustrate rather than promote substantial justice, then it must be avoided.[28]

Immorality as a just cause for termination of employment

Both the LA and the NLRC upheld Cadiz's dismissal as one attended with just cause. The LA, while ruling that Cadiz's indefinite suspension was tantamount to a constructive dismissal, nevertheless found that there was just cause for her dismissal. According to the LA, "there was just cause therefor, consisting in her engaging in premarital sexual relations with Carl Cadiz, allegedly her boyfriend, resulting in her becoming pregnant out of wedlock." [29] The LA deemed said act to be immoral, which was punishable by dismissal under Brent's rules and which likewise constituted serious misconduct under Article 282(a) of the Labor Code. The LA also opined that since Cadiz was Brent's ITuman Resource Officer in charge of implementing its rules against immoral conduct, she should have been the "epitome of proper conduct." [30] The LA ruled:

[Cadiz's] immoral conduct by having premarital sexual relations with her alleged boy friend, a former Brent worker and her co-employee, is magnified as serious misconduct not only by her getting pregnant as a result thereof before and without marriage, but more than that, also by the fact that Brent is an institution of the

Episcopal Church in the Philippines xxx committed to "developing competent and dedicated professionals xxx and in providing excellent medical and other health services to the community for the Glory of God and Service to Humanity." x x x As if these were not enough, [Cadiz] was Brent's Human Resource Officer charged with, among others, implementing the rules of Brent against immoral conduct, including premarital sexual relations, or fornication xxx. She should have been the epitome of proper conduct, but miserably failed. She herself engaged in premarital sexual relations, which surely scandalized the Brent community, x x x.[31]

The NLRC, for its part, sustained the LA's conclusion.

The Court, however, cannot subscribe to the labor tribunals' conclusions.

Admittedly, one of the grounds for disciplinary action under Brent's policies is immorality, which is punishable by dismissal at first offense[32] Brent's Policy Manual provides:

CATEGORY IV

In accordance with Republic Act No. 1052,[33] the following are just cause for terminating an employment of an employee without a definite period:

x x x x

2. Serious misconduct or willful disobedience by the employee of the orders of his employer or representative in connection with his work, such as, but not limited to the following:

x x x x

b. Commission of immoral conduct or indecency within the company premises, such as an act of lasciviousness or any act which is sinful and vulgar in nature.

c. Immorality, concubinage, bigamy.[34]

Its Employee's Manual of Policies, meanwhile, enumerates "[a]cts of immorality such as scandalous behaviour, acts of lasciviousness against any person (patient, visitors, co-workers) within hospital premises"[35] as a ground for discipline and discharge. Brent also relied on Section 94 of the Manual of Regulations for Private Schools (MRPS), which lists "disgraceful or immoral conduct" as a cause for terminating employment.[36]

Thus, the question that must be resolved is whether Cadiz's premarital relations with her boyfriend and the resulting pregnancy out of wedlock constitute immorality. To resolve this, the Court makes reference to the recently promulgated case of Cheryll Santos Lens v. St. Scholastica 's College Westgrove and/or Sr. Edna Quiambao, OSB[37]

Leus involved the same personal circumstances as the case at bench, albeit the employer was a Catholic and sectarian educational institution and the petitioner, Cheryl 1 Santos Leus (Leus), worked as an assistant to the school's Director of the Lay Apostolate and Community Outreach Directorate. Leus was dismissed from employment by the school for having borne a child out of wedlock. The Court ruled in Leus that the determination of whether a conduct is disgraceful or immoral involves a two-step process: first, a consideration of the totality of the circumstances surrounding the conduct; and second, an assessment of the said circumstances vis-a-vis the prevailing norms of conduct, i.e., what the society generally considers moral and respectable.

In this case, the surrounding facts leading to Cadiz's dismissal are straightforward - she was employed as a human resources officer in an educational and medical institution of the Episcopal Church of the Philippines; she and her boyfriend at that time were both single; they engaged in premarital sexual relations, which resulted into pregnancy. The labor tribunals characterized these as constituting disgraceful or immoral conduct. They also sweepingly concluded that as Human Resource Officer, Cadiz should have been the epitome of proper conduct

and her indiscretion "surely scandalized the Brent community." [38]

The foregoing circumstances, however, do not readily equate to disgraceful and immoral conduct. Brent's Policy Manual and Employee's Manual of Policies do not define what constitutes immorality; it simply stated immorality as a ground for disciplinary action. Instead, Brent erroneously relied on the standard dictionary definition of fornication as a form of illicit relation and proceeded to conclude that Cadiz's acts fell under such classification, thus constituting immorality. [39]

Jurisprudence has already set the standard of morality with which an act should be gauged - it is public and secular, not religious. [40] Whether a conduct is considered disgraceful or immoral should be made in accordance with the prevailing norms of conduct, which, as stated in *Leus*, refer to those conducts which are proscribed because they are detrimental to conditions upon which depend the existence and progress of human society. The fact that a particular act does not conform to the traditional moral views of a certain sectarian institution is not sufficient reason to qualify such act as immoral unless it, likewise, does not conform to public and secular standards. More importantly, there must be substantial evidence to establish that premarital sexual relations and pregnancy out of wedlock is considered disgraceful or immoral. [41]

The totality of the circumstances of this case does not justify the conclusion that Cadiz committed acts of immorality. Similar to *Leus*, Cadiz and her boyfriend were both single and had no legal impediment to marry at the time she committed the alleged immoral conduct. In fact, they eventually married on April 15, 2008. [42] Aside from these, the labor tribunals' respective conclusion that Cadiz's "indiscretion" "scandalized the Brent community" is speculative, at most, and there is no proof adduced by Brent to support such sweeping conclusion. Even Brent admitted that it came to know of Cadiz's "situation" only when her pregnancy became manifest. [43] Brent also conceded that "[a]t the time [Cadiz] and Carl R. Cadiz were just carrying on their boyfriend-girlfriend relationship, there was no knowledge or evidence by [Brent] that they were engaged also in premarital sex." [44] This only goes to show that Cadiz did not flaunt her premarital relations with her boyfriend and it was not carried on under scandalous or disgraceful circumstances. As declared in *Leus*, "there is no law which penalizes an unmarried mother by reason of her sexual conduct or proscribes the consensual sexual activity between two unmarried persons; that neither does such situation contravene[s] any fundamental state policy enshrined in the Constitution." [45] The fact that Brent is a sectarian institution does not automatically subject Cadiz to its religious standard of morality absent an express statement in its manual of personnel policy and regulations, prescribing such religious standard as gauge as these regulations create the obligation on both the employee and the employer to abide by the same. [46]

Brent, likewise, cannot resort to the MRPS because the Court already stressed in *Leus* that "premarital sexual relations between two consenting adults who have no impediment to marry each other, and, consequently, conceiving a child out of wedlock, gauged from a purely public and secular view of morality, does not amount to a disgraceful or immoral conduct under Section 94(e) of the 1992 MRPS." [47]

Marriage as a condition for reinstatement

The doctrine of management prerogative gives an employer the right to "regulate, according to his own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, the time, place and manner of work, work supervision, transfer of employees, lay-off of workers, and discipline, dismissal, and recall of employees." [48] In this case, Brent imposed on Cadiz the condition that she subsequently contract marriage with her then boyfriend for her to be reinstated. According to Brent, this is "in consonance with the policy against encouraging illicit or common-law relations that would subvert the sacrament of marriage." [49]

Statutory law is replete with legislation protecting labor and promoting equal opportunity in employment. No less

than the 1987 Constitution mandates that the "State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all." [50] The Labor Code of the Philippines, meanwhile, provides:

Art. 136. Stipulation against marriage. It shall be unlawful for an employer to require as a condition of employment or continuation of employment that a woman employee shall not get married, or to stipulate expressly or tacitly that upon getting married, a woman employee shall be deemed resigned or separated, or to actually dismiss, discharge, discriminate or otherwise prejudice a woman employee merely by reason of her marriage.

With particular regard to women, Republic Act No. 9710 or the Magna Carta of Women [51] protects women against discrimination in all matters relating to marriage and family relations, including the right to choose freely a spouse and to enter into marriage only with their free and full consent. [52]

Weighed against these safeguards, it becomes apparent that Brent's condition is coercive, oppressive and discriminatory. There is no rhyme or reason for it. It forces Cadiz to marry for economic reasons and deprives her of the freedom to choose her status, which is a privilege that inheres in her as an intangible and inalienable right. [53] While a marriage or no-marriage qualification may be justified as a "bona fide occupational qualification," Brent must prove two factors necessitating its imposition, viz: (1) that the employment qualification is reasonably related to the essential operation of the job involved; and (2) that there is a factual basis for believing that all or substantially all persons meeting the qualification would be unable to properly perform the duties of the job. [54] Brent has not shown the presence of neither of these factors. Perforce, the Court cannot uphold the validity of said condition.

Given the foregoing, Cadiz, therefore, is entitled to reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay should be awarded as an alternative and as a form of financial assistance. [55] In the computation of separation pay, the Court stresses that it should not go beyond the date an employee was deemed to have been actually separated from employment, or beyond the date when reinstatement was rendered impossible. [56] In this case, the records do not show whether Cadiz already severed her employment with Brent or whether she is gainfully employed elsewhere; thus, the computation of separation pay shall be pegged based on the findings that she was employed on August 16, 2002, on her own admission in her complaint that she was dismissed on November 17, 2006, and that she was earning a salary of P9,108.70 per month, [57] which shall then be computed at a rate of one (1) month salary for every year of service, [58] as follows:

Monthly salary

P9,108.70

multiplied by number of years

x

in service (Aug 02 to Nov 06)

4

P36,434.80

The Court also finds that Cadiz is only entitled to limited backwages. Generally, the computation of backwages is reckoned from the date of illegal dismissal until actual reinstatement. [59] In case separation pay is ordered in lieu

of reinstatement or reinstatement is waived by the employee, backwages is computed from the time of dismissal until the finality of the decision ordering separation pay.[60] Jurisprudence further clarified that the period for computing the backwages during the period of appeal should end on the date that a higher court reversed the labor arbitration ruling of illegal dismissal.[61] If applied in Cadiz's case, then the computation of backwages should be from November 17, 2006, which was the time of her illegal dismissal, until the date of promulgation of this decision. Nevertheless, the Court has also recognized that the constitutional policy of providing full protection to labor is not intended to oppress or destroy management.[62] The Court notes that at the time of Cadiz's indefinite suspension from employment, Leus was yet to be decided by the Court. Moreover, Brent was acting in good faith and on its honest belief that Cadiz's pregnancy out of wedlock constituted immorality. Thus, fairness and equity dictate that the award of backwages shall only be equivalent to one (1) year or P109,304.40, computed as follows:

Monthly salary

P9,108.70

multiplied by one year x

x

or 12 months

12

P109,304.40

Finally, with regard to Cadiz's prayer for moral and exemplary damages, the Court finds the same without merit. A finding of illegal dismissal, by itself, does not establish bad faith to entitle an employee to moral damages.[63] Absent clear and convincing evidence showing that Cadiz's dismissal from Brent's employ had been carried out in an arbitrary, capricious and malicious manner, moral and exemplary damages cannot be awarded. The Court nevertheless grants the award of attorney's fees in the amount of ten percent (10%) of the total monetary award, Cadiz having been forced to litigate in order to seek redress of her grievances.[64]

WHEREFORE, the petition is GRANTED. The Resolutions dated July 22, 2008 and February 24, 2009 of the Court of Appeals in CA-G.R. SP No. 02373-M1N are REVERSED and SET ASIDE, and a NEW ONE ENTERED finding petitioner Christine Joy Capin-Cadiz to have been dismissed without just cause.

Respondent Brent Hospital and Colleges, Inc. is hereby ORDERED TO PAY petitioner Christine Joy Capin-Cadiz:

- (1) One Hundred Nine Thousand Three Hundred Four Pesos and 40/100 (P109,304.40) as backwages;
- (2) Thirty-Six Thousand Four Hundred Thirty-Four Pesos and 80/100 (P36,434.80) as separation pay; and
- (3) Attorney's fees equivalent to ten percent (10%) of the total award.

The monetary awards granted shall earn legal interest at the rate of six percent (6%) per annum from the date of the finality of this Decision until fully paid.

SO ORDERED

Velasco, Jr., (Chairperson), Peralta, Perez, Reyes, and Jardeleza, JJ., concur.

March 14, 2016

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on ____February 24, 2016____ a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on March 14, 2016 at 9:52 a.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[1] Rollo, pp. 14-49.

[2] Penned by Associate Justice Elihu A. Ybañez with Associate Justices Romulo V. Borja and Mario V. Lopez concurring; id. at 64-64A.

[3] Id. at 65-67.

[4] Id. at 50.

[5] Rendered by Executive Labor Arbiter Rhett Julius J. Plagata; id. at 52-58

[6] Id. at 55-56.

[7] Id. at 56.

[8] Id. at 57-58.

[9] Id. at 59-61.

[10] Id. at 62-63.

[11] Id. at 64-64A.

[12] Id. at 65-67.

[13] Id. at 67.

[14] Id. at 21-22.

[15] Id. at 28.

[16] Id. at 36.

[17] Id. at 38.

[18] Id. at 21-44.

[19] Id. at 86-87.

[20] *Sara Lee Philippines, Inc. v. Macatlang*, G.R. No. 180147, June 4, 2014, 724 SCRA 552, 573-574.

[21] Id.; *Barra v. Civil Service Commission*, 706 Phil. 523, 526 (2013).

[22] See CA rollo, p. 4.

[23] Section 13, Rule 13 of the Rules of Court provides, in part:

If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.

[24] Fortune Life Insurance Company, Inc. v. Commission on Audit (CO A) Proper; CO A Regional Office No. VI-Western Visayas; Audit Group LGS-B, Province of Antique; and Provincial Government of Antique, G.R. No. 213525, January 27, 2015.

[25] The Government of the Philippines v. Aballe, 520 Phil. 181, 190 (2006).

[26] Panaga v. CA, 534 Phil. 809, 816 (2006).

[27] See CA rollo, p.28.

[28] Barroga v. Data Center College of the Philippines, et al, 667 Phil. 808, 818 (2011)

[29] Rollo, p. 56.

[30] Id.

[31] Id.

[32] Id.

[33] AN ACT TO PROVIDE FOR THE MANNER OF TERMINATING EMPLOYMENT WITHOUT A DEFINITE PERIOD IN A COMMERCIAL, INDUSTRIAL, OR AGRICULTURAL, ESTABLISHMENT OR ENTERPRISE (approved on June 12, 1954), which has been repealed by Presidential Decree No. 442 or the Labor Code of the Philippines (effective November 1, 1974). See National Labor Union v. Secretary of Labor, G.R. No. L-41459, December 18, 1987, 156 SCRA 592.

[34] NLRC records, Vol. 1, pp. 77-78.

[35] Id. at 81.

[36] Id. at 54.

[37] G.R. No. 187226, January 28, 2015.

[38] Rollo, p. 56.

[39] NLRC records, Vol. I, pp. 53-54.

[40] Supra note 37.

[41] Id.

[42] Rollo, p. 22.

[43] Id. at 88.

[44] NLRC records, Vol. 2, p. 64.

[45] Supra note 37.

[46] See Abbott Laboratories, Philippines v. Alcaraz, G.R. No. 192571, July 23, 2013, 701 SCRA 682.

- [47] Supra note 37.
- [48] *Peckson v. Robinsons Supermarket Corporation*, G.R. No. 198534, July 3, 2013, 700 SCRA 668, 678-679, citing *Rural Bank of Cantilan, Inc. v. Julve*, 545 Phil. 619, 624 (2007).
- [49] NLRC records, Vol. 1, p. 57.
- [50] Article XIII, Sections.
- [51] Approved on August 14, 2009.
- [52] Section 19(b).
- [53] See *Philippine Telegraph and Telephone Company v. NLRC*, 338 Phil. 1093 (1997).
- [54] *Star Paper Corporation v. Simbol*, 521 Phil. 364, 375 (2006).
- [55] *Rani Rural Bank, Inc. v. De Guzman*, G.R. No. 170904, November 13, 2013, 709 SCRA 330, 349-350.
- [56] *Borclomeo, et al v. CA, et al.*, 704 Phil. 278, 300 (2013).
- [57] Rollo, p. 50. Supra note 56.
- [59] LABOR CDE OF THE PHILIPPINES, Article 279.
- [60] *Bani Rural Bank, Inc. v. De Guzman*, supra note 55.
- [61] *Wenphil Corporation v. Abing*, G.R. No. 207983, April 7, 2014, 721 SCRA 126, 143.
- [62] *Victory Liner, Inc. v. Race*, G.R. No. 164820, December 8, 2008, 573 SCRA 212, 221.
- [63] *Lambert Pawnbrokers and Jewelry Corporation, et al. v. Dinamira*, 639 Phil. 1, 15-16 (2010).
- [64] *Pasos v. Philippine National Construction Corporation*, G.R. No. 192394 July 3 2013 700 SCRA 608, 631.

CONCURRING OPINION

JARDELEZA, J.:

Liberty is a right enshrined in the Constitution. However, as a testament to the impossibility of determining what it truly means to be free, neither the Constitution nor our jurisprudence has attempted to define its metes and bounds. This case challenges this Court to ascertain the extent of the protection of the right to liberty. This Court is called to answer the question of how free a woman is in this country to design the course of her own life. The Constitution must be read to grant her this freedom.

Petitioner Christine Joy Capin-Cadiz (Christine Joy) worked as the Human Resources Officer of respondent Brent Hospital and Colleges, Inc. ("Brent"). In the course of her employment, she met and fell in love with another Brent employee. Both Christine Joy and her boyfriend were single and with no legal impediment to marry. While in the relationship but before their marriage, Christine Joy became pregnant with her boyfriend's child. This prompted Brent to issue an indefinite suspension against her. Brent cited as a ground her unprofessionalism and unethical behavior resulting to unwed pregnancy. Brent also told Christine Joy that she will be reinstated on the condition that she gets married to her boyfriend who was, at that time, no longer a Brent employee. Christine Joy eventually married her boyfriend. This notwithstanding, Christine Joy felt that Brent's condition that she get married first before it reinstates her is unacceptable and an affront to the provision of the Labor Code concerning

stipulations against marriage.

Claiming that this indefinite suspension amounted to constructive dismissal, Christine Joy filed a complaint for illegal dismissal before the National Labor Relations Commission (NLRC). The Labor Arbiter (LA) found that while the indefinite suspension was indeed a constructive dismissal, there was just cause for Brent to terminate Christine Joy's employment. According to the LA, this just cause was that Christine Joy engaged in premarital sexual relations with her boyfriend resulting in pregnancy out of wedlock. The LA also ruled that she was not entitled to reinstatement until she marries her boyfriend. Christine Joy appealed the LA decision before the NLRC. The NLRC affirmed the LA. Christine Joy then filed a special civil action for certiorari under Rule 65 of the Rules of Court before the Court of Appeals. However, the CA dismissed her petition on procedural grounds.

Brent and the labor tribunals argue that there was just cause for Christine Joy's dismissal because Brent's Policy Manual identifies acts of immorality as a ground for disciplinary action. Brent also invokes Section 94 of the Manual of Regulations for Private Schools (MRPS) which lists disgraceful or immoral conduct as a ground for terminating an employee.

I agree with my esteemed colleague Justice Bienvenido L. Reyes' application of the doctrine in *Leus v. St. Scholastica's College Westgrove*.^[1] I take this opportunity to contribute to the analysis for cases similar to this and *Leus* where women's fundamental rights are pitted against an employer's management prerogatives. While the ponencia views the issue from the perspective of public and secular morality, there is also a constitutional dimension to this case that should be considered. This is a woman's right to personal autonomy as a fundamental right.

The Constitution protects personal autonomy as part of the Due Process Clause in the Bill of Rights. Indeed, the Bill of Rights cannot be invoked against private employers.^[2] However, the values expressed in the Constitution cannot be completely ignored in the just adjudication of labor cases.

In this case, Brent's reliance on laws and governmental issuances justifies the view that the Constitution should permeate a proper adjudication of the issue. Brent invokes the MRPS to support Christine Joy's dismissal. The MRPS is a department order issued by the Department of Education (DepEd) in the exercise of its power to regulate private schools. It is thus a government issuance which the DepEd is authorized to issue in accordance with law. Further, the labor tribunals also invoke the Labor Code which provides for the just causes for termination. The Labor Code is a presidential decree and has the status of law. The Constitution is deemed written into every law and government issuance. Hence, in the application of laws and governmental regulations, their provisions should not be interpreted in a manner that will violate the fundamental law of the land.

Further, the relationship between labor and management is a matter imbued with public interest. The Constitution accords protection to labor through various provisions identifying the rights of laborers. This Court has also persistently emphasized the constitutional protection accorded to labor. In *Philippine Telegraph and Telephone Company v. NLRC*,^[3] this Court held that the constitutional guarantee of protection to labor and security of tenure are "paramount in the due process scheme."^[4] Thus, in that case, this Court found that the employer's dismissal of a female employee because of her marriage runs afoul of the right against discrimination afforded to women workers by no less than the Constitution.^[5]

Finally, *Leus* and the ponencia explain that in determining whether a particular conduct may be considered as immoral in the public and secular sense, courts must follow a two-step process. First, courts must consider the totality of the circumstances surrounding the conduct and second, courts must assess these circumstances vis-a-vis the prevailing norms of conduct or what society generally considers as moral. I propose that in ascertaining whether the public holds a particular conduct as moral, the Constitution is a necessary and inevitable guide. The

Constitution is an expression of the ideals of the society that enacted and ratified it. Its bill of rights, in particular, is an embodiment of the most important values of the people enacting a Constitution. Values that find expression in a society's Constitution are not only accepted as moral, they are also fundamental. Thus, I propose that in ascertaining whether an act is moral or immoral, a due consideration of constitutional values must be made. In Christine Joy's case, her decision to continue her pregnancy outside of wedlock is a constitutionally protected right. It is therefore not only moral, it is also a constitutional value that this Court is duty bound to uphold.

It is within this framework of analysis that I view the issue in this case.

Due Process and the Constitutional Right to Personal Liberty and Privacy

Section 1 of Article III of the Bill of Rights provides that no person shall be deprived of liberty without due process of law. The concept of the constitutional right to liberty accepts of no precise definition and finds no specific boundaries. Indeed, there is no one phrase or combination of words that can capture what it means to be free. This Court, nevertheless, as early as the case of *Rubi v. Provincial Board of Mindoro*,^[6] explained that liberty is not merely freedom from imprisonment or restraint. This Court, speaking through Justice George Malcolm, said -

Civil liberty may be said to mean that measure of freedom which may be enjoyed in a civilized community, consistently with the peaceful enjoyment of like freedom in others. The right to liberty guaranteed by the Constitution includes the right to exist and the right to be free from arbitrary personal restraint or servitude. The term cannot be dwarfed into mere freedom from physical restraint of the person of the citizen, but is deemed to embrace the right of man to enjoy the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare. As enunciated in a long array of authorities including epoch-making decisions of the United States Supreme Court, liberty includes the right of the citizen to be free to use his faculties in lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any avocation, and for that purpose, to enter into all contracts which may be proper, necessary, and essential to his carrying out these purposes to a successful conclusion. The chief elements of the guaranty are the right to contract, the right to choose one's employment, the right to labor, and the right of locomotion.

In general, it may be said that liberty means the opportunity to do those things which are ordinarily done by free men.^[7]

In *Morfe v. Mutuc*,^[8] this Court held that the constitutional right to liberty includes the concept of privacy. Quoting US Supreme Court Justice Louis Brandeis, this Court explained that the right to be let alone is "the most comprehensive of rights and the right most valued by civilized men."^[9] Justice Enrique Fernando, in his ponencia, even went a step further and adopted the ruling in the US Supreme Court case *Griswold v. Connecticut*.^[10] He said that the right to privacy is "accorded recognition independently of its identification with liberty."^[11] He also added that "[t]he concept of liberty would be emasculated if it does not likewise compel respect for his personality as a unique individual whose claim to privacy and interference demands respect."^[12]

Ople v. Torresu^[13] reveals how this Court has come to recognize privacy as a component of liberty under the Due Process Clause and as a constitutional right arising from zones created by several other provisions of the Constitution. Chief Justice Reynato S. Puno, for this Court, explained that privacy finds express recognition in Section 3 of Article III of the Constitution which speaks of the privacy of communication and correspondence. He further stated that there are other facets of privacy protected under various provisions of the Constitution such as the Due Process Clause, the right against unreasonable searches and seizures, the liberty of abode and of changing the same, the right of association and the right against self-incrimination.

Jurisprudence directs us to the conclusion that the constitutional right to liberty does not merely refer to freedom from physical restraint. It also includes the right to be free to choose to be, in the words of Justice Fernando, a "unique individual."^[14] This necessarily includes the freedom to choose how a person defines her personhood and how she decides to live her life. Liberty, as a constitutional right, involves not just freedom from unjustified imprisonment. It also pertains to the freedom to make choices that are intimately related to a person's own definition of her humanity. The constitutional protection extended to this right mandates that beyond a certain point, personal choices must not be interfered with or unduly burdened as such interference with or burdening of the right to choose is a breach of the right to be free.

In the United States, whose Constitution has heavily influenced ours, jurisprudence on the meaning of personal liberty is much more detailed and expansive. Their protection of the constitutional right to privacy has covered marital privacy, the right of a woman to choose to terminate her pregnancy and sexual conduct between unmarried persons.

In *Griswold v. Connecticut*,^[15] the US Supreme Court held that privacy is a right protected under the US Constitution. *Griswold* explained that the US Constitution's Bill of Rights creates zones of privacy which prevents interference save for a limited exception. Thus, *Griswold* invalidated a statute which criminalizes the sale of contraceptives to married persons, holding that marital privacy falls within the penumbra of the right to privacy under the US Constitution's Bill of Rights.

Eisenstadt v. Baird^[16] extended this right to privacy to unmarried persons. In this case, the US Supreme Court also held invalid a law prohibiting the distribution of contraceptives to unmarried persons. *Eisenstadt* explained that "[i]f the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child."^[17]

In the celebrated case *Roe v. Wade*,^[18] the US Supreme Court again explored the concept of the constitutional right to privacy. In this case, the US Supreme Court affirmed that while the US Constitution does not expressly mention a right to privacy, its provisions create such zones of privacy which warrant constitutional protection. *Roe* added to the growing jurisprudence on the right to privacy by stating that prior US Supreme Court cases reveal that "only personal rights that can be deemed 'fundamental' or 'implicit in the concept of ordered liberty,' are included in this guarantee of personal privacy. They also make it clear that the right has some extension to activities relating to marriage, procreation, contraception, family relationships, and [child rearing] and education."^[19] In *Roe*, the US Supreme Court held that the constitutional right to privacy also encompasses a woman's choice whether to terminate her pregnancy.

Planned Parenthood of Southeastern Pa. v. Casey,^[20] which affirmed the essential ruling in *Roe*, added to this discussion on the right to privacy. The US Supreme Court repeated that the constitutional right to privacy means a protection from interference so that people, married or single, may be free to make the most intimate and personal choices of a lifetime. These choices, which are central to personal dignity and autonomy, are also central to the protection given under the Fourteenth Amendment of the US Constitution, the American Constitutional law equivalent of our Due Process Clause. Affirming that a woman has the right to choose to terminate her pregnancy as a component of her right to privacy, *Planned Parenthood* stated that "[t]he destiny of the woman must be shaped to a large extent on her own conception of her spiritual imperatives and her place in society."^[21]

The US Supreme Court also ruled that the right to privacy includes sexual conduct between consenting adults. Thus, in *Lawrence v. Texas*,^[22] the US Supreme Court invalidated a law criminalizing sodomy. *Lawrence* held that "[t]he petitioners are entitled to respect for their private lives. The State cannot demean their existence or

control their destiny by making their private sexual conduct a crime. Their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government." [23]

The right to privacy as a component of personal liberty in the Due Process Clause also includes the freedom to choose whom to marry. This was the import of the US Supreme Court's ruling in *Loving v. Virginia* [24] which invalidated a law prohibiting interracial marriages. This was also one of the essential rulings in *Obergefell v. Hodges* [25] which held same-sex marriage as constitutional.

I propose that our reading of the constitutional right to personal liberty and privacy should approximate how personal liberty as a concept has developed in the US as adopted in our jurisprudence.

At the heart of this case are two rights that are essential to the concept of personal liberty and privacy, if they are to be given any meaning at all. Brent's act of dismissing Christine Joy because of her pregnancy out of wedlock, with the condition that she will be reinstated if she marries her then boyfriend, unduly burdens first, her right to choose whether to marry, and second, her right to decide whether she will bear and rear her child without marriage. These are personal decisions that go into the core of how Christine Joy chooses to live her life. This Court cannot countenance any undue burden that prejudices her right to be free.

The Right to Choose Marriage

The Labor Code contains provisions pertaining to stipulations against marriage. Specifically, Article 134 states that it is unlawful for employers to require as a condition for employment or continuation of employment that a woman employee shall not get married. This provision also prohibits the dismissal of a woman employee by reason of her marriage. This Court, in the case of *Philippine Telegraph and Telephone Company v. NLRC*, [26] has applied this provision and found illegal the dismissal of a woman employee because of a condition in her contract that she remains single during her employment. Christine Joy's case involves the reverse, albeit the effect is as burdensome and as odious.

In constructively dismissing Christine Joy and promising her reinstatement provided she marries her boyfriend, Brent has breached not a mere statutory prohibition but a constitutional right. While as I have already explained, there is jurisprudence to the effect that the Bill of Rights cannot be invoked against a private employer, Brent's act of invoking the MRPS and the Labor Code brings this case within the ambit of the Constitution. In arguing that immorality is a just cause for dismissal under the MRPS and the Labor Code, Brent is effectively saying that these government issuances violate the constitutional right to personal liberty and privacy. This interpretation cannot be countenanced. The Constitution is deemed written into these government issuances and as such, they must be construed to recognize the protection vested by the Bill of Rights.

As I have already discussed, the rights to personal liberty and privacy are embodied in the Due Process Clause and expounded by jurisprudence. These rights pertain to the freedom to make personal choices that define a human being's life and personhood. The decision to marry and to whom are two of the most important choices that a woman can make in her life. In the words of the US Supreme Court in *Obergefell* "[n]o union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were." [27] The State has no business interfering with this choice. Neither can it sanction any undue burden of the right to make these choices. Brent, in conditioning Christine Joy's reinstatement on her marriage, has effectively burdened her freedom. She was forced to choose to lose her job or marry in order to keep it. By invoking the MRPS and the Labor Code, Brent is, in effect, saying that this kind of compelled choice is sanctioned by the State. Contrary to this position, the State cannot countenance placing a woman employee in a situation where she will have to give up one right (the right to marry as a component of personal liberty and privacy) for another (the right to employment). This is

not the kind of State that we are in. Nor is it the kind of values that our Constitution stands for.

The Right to Bear and Rear a Child outside of Marriage

The Labor Code prohibits the discriminatory act of discharging a woman on account of her pregnancy.[28] Brent, in constructively dismissing Christine Joy because of her pregnancy, violated this prohibition. Brent, however, attempts to evade this prohibition by claiming that it was not the mere fact of Christine Joy's pregnancy that caused her dismissal. Rather, according to Brent, it is her pregnancy outside of wedlock that justified her termination as immorality is a just cause under the MRPS and the Labor Code. In doing so, Brent not only violated the law, it even went further and asked the labor tribunals and the judiciary to lend an interpretation to the Labor Code and the MRPS that disregards the Constitution.

Christine Joy has the right to decide how she will rear her child. If this choice involves being a single mother for now or for good, no law or government issuance may be used to interfere with this decision. Christine Joy, and all other women similarly situated, should find refuge in the protection extended by the Constitution.

The Constitution highlights the value of the family as the foundation of the nation.[29] Complementary to this, the Family Code of the Philippines provides that marriage is the foundation of the family.[30] Indeed, our laws and tradition recognize that children are usually reared and families built within the confines of marriage. The Constitution and the laws, however, merely express an ideal. While marriage is the ideal starting point of a family, there is no constitutional or statutory provision limiting the definition of a family or preventing any attempt to deviate from our traditional template of what a family should be.

In other jurisdictions, there is a growing clamor for laws to be readjusted to suit the needs of a rising class of women - single mothers by choice. These countries are faced with the same predicament that Brent confronted in this case - their rules have lagged behind the demands of the times. Nevertheless, in our jurisdiction, the Constitution remains as the guide to ascertain how new situations are to be dealt with. In Christine Joy's case, the Constitution tells us that her right to personal liberty and privacy protects her choice as to whether she will raise her child in a marriage. Brent, in dismissing Christine Joy because of her pregnancy outside of wedlock, unduly burdened her right to choose. Again, the MRPS and the Labor Code cannot be used to justify Brent's acts. These government issuances respect the Constitution and abide by it. Any contrary interpretation cannot be countenanced.

In my proposed reading of the constitutional right to personal liberty and privacy, Christine Joy and other women similarly situated are free to be single mothers by choice. This cannot be curtailed in the workplace through discriminatory policies against pregnancy out of wedlock. The Constitution allows women in this country to design the course of their own lives. They are free to chart their own destinies.

Constitution and Public Secular Morality

I finally propose that in applying the two-tier test in *Leus* and in the ponencia, the Constitution should be considered as a gauge of what the public deems as moral. In this case, there is a constitutionally declared value to protecting the right to choose to marry and the right to be a single mother by choice. This is our people's determination of what is moral. Thus, in the incisive analysis of Justice Reyes, whenever this right to choose is involved, the Constitution compels us to find that the act is constitutionally protected, and as such, is necessarily moral in the public and secular sense.

ACCORDINGLY, I vote to grant the Petition.

- [1] G.R. No. 187226, January 28, 2015, 748 SCRA 378.
- [2] *Serrano v. NLRC*, G.R. No. 117040, January 27, 2000, 323 SCRA 445.
- [3] G.R. No. 118978, May 23, 1997, 272 SCRA 596.
- [4] *Id.* at 604.
- [5] *Id.* at 605.
- [6] 39 Phil. 660 (1919).
- [7] *Id.* at 705; citations omitted, emphasis in the original.
- [8] G.R. No. L-20387, January 31, 1968, 22 SCRA 424.
- [9] *Id.* at 442.

[10] 381 U.S. 479 (1965).

- [11] *Morfe v. Mutuc*, *supra* at 444.
- [12] *Id.* at 442.
- [13] G.R. No. 127685, July 23, 1998, 293 SCRA 141.
- [14] *Morfe v. Mutuc*, *supra*.
- [15] *Supra* note 10.

[16] 405 U.S. 438(1972).

- [17] *Id.* at 454; citations omitted.

[18] 410 U.S. 113(1973).

- [19] *Id.* at 153-154; citations omitted.

[20] 505 U.S. 833(1992).

- [21] *Id.* at 853.

[22] 539 U.S. 558 (2003).

- [23] *Id.* at 579.

[24] 388 U.S. 1 (1967).

[25] 576 U.S. __ (2015).

- [26] *Supra* note 3.

[27] 576 U.S. _ (2015).

[28] LABOR CODE, Art. 135.

[29] CONSTITUTION, Art. XV, Sec. 1.

[30] FAMILY CODE, Art. 1.

[31] See Fiona Kelly, *Autonomous Motherhood and the Law: Exploring the Narratives of Canada's Single Mothers By Choice*, 28 Can. J. Fam. L 63 (2013).

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