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G.R. No. 207145. July 28, 2015

Ponente: PERALTA, J.

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PERALTA, J.:

Before the Court is a petition for certiorari and prohibition under Rule 65 of the Rules of Court filed by the officers and members of the Philippine Public Health Association, Inc. (PPHAI) assailing the validity of Joint Circular No. 1[1] dated November 29, 2012 of the Department of Budget and Management (DBM) and the Department of Health (DOH) as well as Item 6.5 of the Joint Circular[2] dated September 3, 2012 of the DBM and the Civil Service Commission (CSC).

The antecedent facts are as follows:

On March 26, 1992, Republic Act (RA) No. 7305, otherwise known as The Magna Carta of Public Health Workers was signed into law in order to promote the social and economic well-being of health workers, their living and working conditions and terms of employment, to develop their skills and capabilities to be better equipped to deliver health projects and programs, and to encourage those with proper qualifications and excellent abilities to join and remain in government service.[3] Accordingly, public health workers (PHWs) were granted the following allowances and benefits, among others:

Section 20. Additional Compensation. - Notwithstanding Section 12 of Republic Act No. 6758, public health workers shall receive the following allowances: hazard allowance, subsistence allowance, longevity pay, laundry allowance and remote assignment allowance.

Section 21. Hazard Allowance. - Public health workers in hospitals, sanitaria, rural health units, main health centers, health infirmaries, barangay health stations, clinics and other health-related establishments located in difficult areas, strife-torn or embattled areas, distressed or isolated stations, prisons camps, mental hospitals, radiation-exposed clinics, laboratories or disease-infested areas or in areas declared under state of calamity or emergency for the duration thereof which expose them to great danger, contagion, radiation, volcanic activity/eruption, occupational risks or perils to life as determined by the Secretary of Health or the Head of the unit with the approval of the Secretary of Health, shall be compensated hazard allowances equivalent to at least twenty-five percent (25%) of the monthly basic salary of health workers receiving salary grade 19 and below, and five percent (5%) for health workers with salary grade 20 and above.

Section 22. Subsistence Allowance. - Public health workers who are required to render service within the premises of hospitals, sanitaria, health infirmaries, main health centers, rural health units and barangay health stations, or clinics, and other health-related establishments in order to make their services available at any and all times, shall be entitled to full subsistence allowance of three (3) meals which may be computed in accordance with prevailing circumstances as determined by the Secretary of Health in consultation with the

Management-Health Worker's Consultative Councils, as established under Section 33 of this Act: Provided, That representation and travel allowance shall be given to rural health physicians as enjoyed by municipal agriculturists, municipal planning and development officers and budget officers.

Section 23. Longevity Pay. - A monthly longevity pay equivalent to five percent (5%) of the monthly basic pay shall be paid to a health worker for every five (5) years of continuous, efficient and meritorious services rendered as certified by the chief of office concerned, commencing with the service after the approval of this Act.[4]

Pursuant to Section 35[5] of the Magna Carta, the Secretary of Health promulgated its Implementing Rules and Regulations (IRR) in July 1992. Thereafter, in November 1999, the DOH, in collaboration with various government agencies and health workers' organizations, promulgated a Revised IRR consolidating all additional and clarificatory rules issued by the former Secretaries of Health dating back from the effectivity of the Magna Carta. The pertinent provisions of said Revised IRR provide:

6.3. Longevity Pay. — A monthly longevity pay equivalent to five percent (5%) of the present monthly basic pay shall be paid to public health workers for every five (5) years of continuous, efficient and meritorious services rendered as certified by the Head of Agency/Local Chief Executives commencing after the approval of the Act. (April 17, 1992)

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7.1.1. Eligibility to Receive Hazard Pay. — All public health workers covered under RA 7305 are eligible to receive hazard pay when the nature of their work exposes them to high risk/low risk hazards for at least fifty percent (50%) of their working hours as determined and approved by the Secretary of Health or his authorized representatives.

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7.2.1. Eligibility for Subsistence Allowance

a. All public health workers covered under RA 7305 are eligible to receive full subsistence allowance as long as they render actual duty.

b. Public Health Workers shall be entitled to full Subsistence Allowance of three (3) meals which may be computed in accordance with prevailing circumstances as determined by the Secretary of Health in consultation with the Management-Health Workers Consultative Council, as established under Section 33 of the Act.

c. Those public health workers who are out of station shall be entitled to per diems in place of Subsistence Allowance. Subsistence Allowance may also be commuted.

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7.2.3 Rates of Subsistence Allowance

a. Subsistence allowance shall be implemented at not less than Php50.00 per day or Php1,500.00 per month as certified by head of agency.

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d. Part-time public health workers/consultants are entitled to one-half (1/2) of the prescribed rates received by full-time public health workers.[6]

On July 28, 2008, the Fourteenth Congress issued Joint Resolution No. 4, entitled Joint Resolution Authorizing

the President of the Philippines to Modify the Compensation and Position Classification System of Civilian Personnel and the Base Pay Schedule of Military and Uniformed Personnel in the Government, and for other Purposes, approved by then President Gloria Macapagal-Arroyo on June 17, 2009, which provided for certain amendments in the Magna Carta and its IRR.

On September 3, 2012, respondents DBM and CSC issued one of the two assailed issuances, DBM-CSC Joint Circular No. 1, Series of 2012, to prescribe the rules on the grant of Step Increments due to meritorious performance and Step Increment due to length of service.[7] Specifically, it provided that "an official or employee authorized to be granted Longevity Pay under an existing law is not eligible for the grant of Step Increment due to length of service." [8]

Shortly thereafter, on November 29, 2012, respondents DBM and DOH then circulated the other assailed issuance, DBM-DOH Joint Circular No. 1, Series of 2012, the relevant provisions of which state:

7.0. Hazard Pay. - Hazard pay is an additional compensation for performing hazardous duties and for enduring physical hardships in the course of performance of duties.

As a general compensation policy, and in line with Section 21 of R. A. No. 7305, Hazard Pay may be granted to PHWs only if the nature of the duties and responsibilities of their positions, their actual services, and location of work expose them to great danger, occupational risks, perils of life, and physical hardships; and only during periods of actual exposure to hazards and hardships.

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8.3 The Subsistence Allowance shall be P50 for each day of actual full-time service, or P25 for each day of actual part-time service.

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9.0 Longevity Pay (LP)

9.1 Pursuant to Section 23 of R. A. No. 7305, a PHW may be granted LP at 5% of his/her current monthly basic salary, in recognition of every 5 years of continuous, efficient, and meritorious services rendered as PHW. The grant thereof is based on the following criteria:

9.1.1 The PHW holds a position in the agency plantilla of regular positions; and

9.1.2 He/She has rendered at least satisfactory performance and has not been found guilty of any administrative or criminal case within all rating periods covered by the 5-year period.

In a letter[9] dated January 23, 2013 addressed to respondents Secretary of Budget and Management and Secretary of Health, petitioners expressed their opposition to the Joint Circular cited above on the ground that the same diminishes the benefits granted by the Magna Carta to PHWs.

Unsatisfied, petitioners, on May 30, 2013, filed the instant petition raising the following issues:

I.

WHETHER RESPONDENTS ENRIQUE T. ONA AND FLORENCIO B. ABAD ACTED WITH GRAVE ABUSE OF DISCRETION AND VIOLATED SUBSTANTIVE DUE PROCESS WHEN THEY ISSUED DBM-DOH JOINT CIRCULAR NO. 1, S. 2012 WHICH:

A)

MADE THE PAYMENT OF HAZARD PAY DEPENDENT ON THE ACTUAL DAYS OF EXPOSURE TO

THE RISK INVOLVED;

B)

ALLOWED PAYMENT OF SUBSISTENCE ALLOWANCE AT P50 FOR EACH DAY OF ACTUAL FULL-TIME SERVICE OR P25 FOR EACH DAY OF ACTUAL PART-TIME SERVICE WITHOUT CONSIDERATION OF THE PREVAILING CIRCUMSTANCES AS DETERMINED BY THE SECRETARY OF HEALTH IN CONSULTATION WITH THE MANAGEMENT HEALTH WORKERS' CONSULTATIVE COUNCILS;

C)

REQUIRED THAT LONGEVITY PAY BE GRANTED ONLY TO PHWs WHO HOLD PLANTILLA AND REGULAR POSITIONS; AND

D)

MADE THE JOINT CIRCULAR EFFECTIVE ON JANUARY 1, 2013, BARELY THREE (3) DAYS AFTER IT WAS PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION ON DECEMBER 29, 2012, IN VIOLATION OF THE RULES ON PUBLICATION.

II.

WHETHER RESPONDENTS FRANCISCO T. DUQUE AND FLORENCIO B. ABAD ACTED WITH GRAVE ABUSE OF DISCRETION WHEN THEY ISSUED DBM-CSC JOINT CIRCULAR NO. 1, S. 2012 DATED SEPTEMBER 2, 2012 WHICH PROVIDED THAT AN OFFICIAL OR EMPLOYEE ENTITLED TO LONGEVITY PAY UNDER EXISTING LAW SHALL NO LONGER BE GRANTED STEP INCREMENT DUE TO LENGTH OF SERVICE.

III.

WHETHER RESPONDENTS' ISSUANCE OF DBM-DOH JOINT CIRCULAR NO. 1, S. 2012 IS NULL AND VOID FOR BEING AN UNDUE EXERCISE OF LEGISLATIVE POWER BY ADMINISTRATIVE BODIES WHEN RESPONDENT ONA ALLOWED RESPONDENT ABAD TO SIGNIFICANTLY SHARE THE POWER TO FORMULATE AND PREPARE THE NECESSARY RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS OF THE MAGNA CARTA.

IV.

WHETHER RESPONDENT ONA WAS REMISS IN IMPLEMENTING THE MANDATE OF THE MAGNA CARTA WHEN HE DID NOT INCLUDE THE MAGNA CARTA BENEFITS IN THE DEPARTMENT'S YEARLY BUDGET.

V.

WHETHER RESPONDENTS' ISSUANCE OF DBM-DOH JOINT CIRCULAR NO. 1, S. 2012 IS NULL AND VOID FOR BEING AN UNDUE EXERCISE OF LEGISLATIVE POWER BY ADMINISTRATIVE BODIES WHEN THE SAME WAS ISSUED SANS CONSULTATION WITH PROFESSIONAL AND HEALTH WORKERS' ORGANIZATIONS AND UNIONS.

Petitioners contend that respondents acted with grave abuse of discretion when they issued DBM-DOH Joint Circular No. 1, Series of 2012 and DBM-CSC Joint Circular No. 1, Series of 2012 which prescribe certain

requirements on the grant of benefits that are not otherwise required by RA No. 7305. Specifically, petitioners assert that the DBM-DOH Joint Circular grants the payment of Hazard Pay only if the nature of the PHWs' duties expose them to danger when RA No. 7305 does not make any qualification. They likewise claim that said circular unduly fixes Subsistence Allowance at P50 for each day of full-time service and P25 for part-time service which are not in accordance with prevailing circumstances determined by the Secretary of Health as required by RA No. 7305. Moreover, petitioners fault respondents for the premature effectivity of the DBM-DOH Joint Circular which they believe should have been on January 29, 2012 and not on January 1, 2012. As to the grant of Longevity Pay, petitioners posit that the same was wrongfully granted only to PHWs holding regular plantilla positions. Petitioners likewise criticize the DBM-CSC Joint Circular insofar as it withheld the Step Increment due to length of service from those who are already being granted Longevity Pay. As a result, petitioners claim that the subject circulars are void for being an undue exercise of legislative power by administrative bodies.

In their Comment, respondents, through the Solicitor General, refute petitioners' allegations in stating that the assailed circulars were issued within the scope of their authority, and are therefore valid and binding. They also assert the authority of Joint Resolution No. 4, Series of 2009, approved by the President, in accordance with the prescribed procedure. Moreover, respondents question the remedies of Certiorari and Prohibition used by petitioners for the assailed circulars were done in the exercise of their quasi-legislative, and not of their judicial or quasi-judicial functions.

The petition is partly meritorious.

At the outset, the petition for certiorari and prohibition filed by petitioners is not the appropriate remedy to assail the validity of respondents' circulars. Sections 1 and 2 of Rule 65 of the Rules of Court provide:

RULE 65

CERTIORARI, PROHIBITION AND MANDAMUS

Section 1. Petition for certiorari. - When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

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Sec. 2. Petition for Prohibition. - When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.[10]

Thus, on the one hand, certiorari as a special civil action is available only if: (1) it is directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions; (2) the tribunal, board, or officer acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law.[11]

On the other hand, prohibition is available only if: (1) it is directed against a tribunal, corporation, board, officer, or person exercising functions, judicial, quasi-judicial, or ministerial; (2) the tribunal, corporation, board or person

acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[12] Based on the foregoing, this Court has consistently reiterated that petitions for certiorari and prohibition may be invoked only against tribunals, corporations, boards, officers, or persons exercising judicial, quasi-judicial or ministerial functions, and not against their exercise of legislative or quasi-legislative functions.[13]

Judicial functions involve the power to determine what the law is and what the legal rights of the parties are, and then undertaking to determine these questions and adjudicate upon the rights of the parties.[14] Quasi-judicial functions apply to the actions and discretion of public administrative officers or bodies required to investigate facts, hold hearings, and draw conclusions from them as a basis for their official action, in their exercise of discretion of a judicial nature.[15] Ministerial functions are those which an officer or tribunal performs in the context of a given set of facts, in a prescribed manner and without regard to the exercise of his own judgment upon the propriety or impropriety of the act done.[16]

Before a tribunal, board, or officer may exercise judicial or quasi-judicial acts, it is necessary that there be a law that gives rise to some specific rights under which adverse claims are made, and the controversy ensuing therefrom is brought before a tribunal, board, or officer clothed with authority to determine the law and adjudicate the respective rights of the contending parties.[17]

In this case, respondents did not act in any judicial, quasi-judicial, or ministerial capacity in their issuance of the assailed joint circulars. In issuing and implementing the subject circulars, respondents were not called upon to adjudicate the rights of contending parties to exercise, in any manner, discretion of a judicial nature. The issuance and enforcement by the Secretaries of the DBM, CSC and DOH of the questioned joint circulars were done in the exercise of their quasi-legislative and administrative functions. It was in the nature of subordinate legislation, promulgated by them in their exercise of delegated power. Quasi-legislative power is exercised by administrative agencies through the promulgation of rules and regulations within the confines of the granting statute and the doctrine of non-delegation of powers from the separation of the branches of the government.[18]

Based on the foregoing, certiorari and prohibition do not lie against herein respondents' issuances. It is beyond the province of certiorari to declare the aforesaid administrative issuances illegal because petitions for certiorari seek solely to correct defects in jurisdiction, and not to correct just any error committed by a court, board, or officer exercising judicial or quasi-judicial functions unless such court, board, or officer thereby acts without or in excess of jurisdiction or with such grave abuse of discretion amounting to lack of jurisdiction.[19]

It is likewise beyond the territory of a writ of prohibition since generally, the purpose of the same is to keep a lower court within the limits of its jurisdiction in order to maintain the administration of justice in orderly channels. It affords relief against usurpation of jurisdiction by an inferior court, or when, in the exercise of jurisdiction, the inferior court transgresses the bounds prescribed by the law, or where there is no adequate remedy available in the ordinary course of law.[20]

Be that as it may, We proceed to discuss the substantive issues raised in the petition in order to finally resolve the doubt over the Joint Circulars' validity. For proper guidance, the pressing issue of whether or not the joint circulars regulating the salaries and benefits relied upon by public health workers were tainted with grave abuse of discretion rightly deserves its prompt resolution.

With respect to the infirmities of the DBM-DOH Joint Circular raised in the petition, they cannot be said to have been issued with grave abuse of discretion for not only are they reasonable, they were likewise issued well within the scope of authority granted to the respondents. In fact, as may be gathered from prior issuances on the matter, the circular did not make any substantial deviation therefrom, but actually remained consistent with, and germane

to, the purposes of the law.

First, the qualification imposed by the DBM-DOH Joint Circular granting the payment of Hazard Pay only if the nature of PHWs' duties expose them to danger and depending on whether the risk involved is high or low was merely derived from Section 7.1.1 of the Revised IRR of RA No. 7305, duly promulgated by the DOH in collaboration with various government health agencies and health workers' organizations in November 1999, to wit:

SECTION 7.1.1. Eligibility to Receive Hazard Pay. — All public health workers covered under RA 7305 are eligible to receive hazard pay when the nature of their work exposes them to high risk/low risk hazards for at least fifty percent (50%) of their working hours as determined and approved by the Secretary of Health or his authorized representatives.[21]

Second, fixing the Subsistence Allowance at P50 for each day of full-time service and P25 for part-time service was also merely a reiteration of the limits prescribed by the Revised IRR, validly issued by the Secretary of Health pursuant to Section 35[22] of RA No. 7305, the pertinent portions of which states:

Section 7.2.3 Rates of Subsistence Allowance

a. Subsistence allowance shall be implemented at not less than PhP50.00 per day or PhP1,500.00 per month as certified by head of agency.

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d. Part-time public health workers/consultants are entitled to one-half (1/2) of the prescribed rates received by full-time public health workers.

Third, the condition imposed by the DBM-DOH Joint Circular granting longevity pay only to those PHWs holding regular plantilla positions merely implements the qualification imposed by the Revised IRR which provides:

6.3. Longevity Pay. — A monthly longevity pay equivalent to five percent (5%) of the present monthly basic pay shall be paid to public health workers for every five (5) years of continuous, efficient and meritorious services rendered as certified by the Head of Agency/Local Chief Executives commencing after the approval of the Act. (April 17, 1992)

6.3.1. Criteria for Efficient and Meritorious Service A Public Worker shall have:

- a. At least a satisfactory performance rating within the rating period.
- b. Not been found guilty of any administrative or criminal case within the rating period.

As can be gleaned from the aforequoted provision, petitioners failed to show any real inconsistency in granting longevity pay to PHWs holding regular plantilla positions. Not only are they based on the same premise, but the intent of longevity pay, which is paid to workers for every five (5) years of continuous, efficient and meritorious services, necessarily coincides with that of regularization. Thus, the assailed circular cannot be invalidated for its issuance is consistent with, and germane to, the purposes of the law.

Anent petitioners' contention that the DBM-DOH Joint Circular is null and void for its failure to comply with Section 35[23] of RA No. 7305 providing that its implementing rules shall take effect thirty (30) days after publication in a newspaper of general circulation, as well as its failure to file a copy of the same with the University of the Philippines Law Center-Office of the National Administrative Register (UP Law Center-ONAR), jurisprudence as well as the circumstances of this case dictate otherwise.

Indeed, publication, as a basic postulate of procedural due process, is required by law in order for administrative

rules and regulations to be effective.[24] There are, however, several exceptions, one of which are interpretative regulations which "need nothing further than their bare issuance for they give no real consequence more than what the law itself has already prescribed." [25] These regulations need not be published for they add nothing to the law and do not affect substantial rights of any person.[26]

Thus, in *Association of Southern Tagalog Electric Cooperatives, et. al. v. Energy Regulatory Commission (ERC)*, [27] wherein several orders issued by the ERC were sought to be invalidated for lack of publication and non-submission of copies thereof to the UP Law Center - ONAR, it has been held that since they merely interpret RA No. 7832 and its IRR, particularly on the computation of the cost of purchased power, without modifying, amending or supplanting the same, they cannot be rendered ineffective, to wit:

When the policy guidelines of the ERC directed the exclusion of discounts extended by power suppliers in the computation of the cost of purchased power, the guidelines merely affirmed the plain and unambiguous meaning of "cost" in Section 5, Rule IX of the IRR of R.A. No. 7832. "Cost" is an item of outlay, and must therefore exclude discounts since these are not amounts paid or charged for the sale of electricity, but are reductions in rates.

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Thus, the policy guidelines of the ERC on the treatment of discounts extended by power suppliers "give no real consequence more than what the law itself has already prescribed." Publication is not necessary for the effectivity of the policy guidelines.

As interpretative regulations, the policy guidelines of the ERC on the treatment of discounts extended by power suppliers are also not required to be filed with the U.P. Law Center in order to be effective. Section 4, Chapter 2, Book VII of the Administrative Code of 1987 requires every rule adopted by an agency to be filed with the U.P. Law Center to be effective. However, in *Board of Trustees of the Government Service Insurance System v. Velasco*, this Court pronounced that "not all rules and regulations adopted by every government agency are to be filed with the UP Law Center." Interpretative regulations and those merely internal in nature are not required to be filed with the U.P. Law Center. Paragraph 9 (a) of the Guidelines for Receiving and Publication of Rules and Regulations Filed with the U.P. Law Center states:

9. Rules and Regulations which need not be filed with the U.P. Law Center, shall, among others, include but not be limited to, the following:

a. Those which are interpretative regulations and those merely internal in nature, that is, regulating only the personnel of the Administrative agency and not the public.

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Furthermore, the policy guidelines of the ERC did not create a new obligation and impose a new duty, nor did it attach a new disability. As previously discussed, the policy guidelines merely interpret R.A. No. 7832 and its IRR, particularly on the computation of the cost of purchased power. The policy guidelines did not modify, amend or supplant the IRR.

Similarly, in *Republic v. Drugmaker's Laboratories, Inc.*, [28] the validity of circulars issued by the Food and Drug Administration (FDA) was upheld in spite of the non-compliance with the publication, prior hearing, and consultation requirements for they merely implemented the provisions of Administrative Order No. 67, entitled "Revised Rules and Regulations on Registration of Pharmaceutical Products" issued by the DOH, in the following wise:

A careful scrutiny of the foregoing issuances would reveal that AO 67, s. 1989 is actually the rule that originally introduced the BA/BE testing requirement as a component of applications for the issuance of CPRs covering certain pharmaceutical products. As such, it is considered an administrative regulation - a legislative

rule to be exact - issued by the Secretary of Health in consonance with the express authority granted to him by RA 3720 to implement the statutory mandate that all drugs and devices should first be registered with the FDA prior to their manufacture and sale. Considering that neither party contested the validity of its issuance, the Court deems that AO 67, s. 1989 complied with the requirements of prior hearing, notice, and publication pursuant to the presumption of regularity accorded to the government in the exercise of its official duties.⁴²

On the other hand, Circular Nos. 1 and 8, s. 1997 cannot be considered as administrative regulations because they do not: (a) implement a primary legislation by providing the details thereof; (b) interpret, clarify, or explain existing statutory regulations under which the FDA operates; and/or (c) ascertain the existence of certain facts or things upon which the enforcement of RA 3720 depends. In fact, the only purpose of these circulars is for the FDA to administer and supervise the implementation of the provisions of AO 67, s. 1989, including those covering the BA/BE testing requirement, consistent with and pursuant to RA 3720.⁴³ Therefore, the FDA has sufficient authority to issue the said circulars and since they would not affect the substantive rights of the parties that they seek to govern - as they are not, strictly speaking, administrative regulations in the first place -no prior hearing, consultation, and publication are needed for their validity.

In this case, the DBM-DOH Joint Circular in question gives no real consequence more than what the law itself had already prescribed. As previously discussed, the qualification of actual exposure to danger for the PHW's entitlement to hazard pay, the rates of P50 and P25 subsistence allowance, and the entitlement to longevity pay on the basis of PHW's status in the plantilla of regular positions were already prescribed and authorized by pre-existing law. There is really no new obligation or duty imposed by the subject circular for it merely reiterated those embodied in RA No. 7305 and its Revised IRR. The Joint Circular did not modify, amend nor supplant the Revised IRR, the validity of which is undisputed. Consequently, whether it was duly published and filed with the UP Law Center - ONAR is necessarily immaterial to its validity because in view of the pronouncements above, interpretative regulations, such as the DBM-DOH circular herein, need not be published nor filed with the UP Law Center - ONAR in order to be effective. Neither is prior hearing or consultation mandatory.

Nevertheless, it bears stressing that in spite of the immateriality of the publication requirement in this case, and even assuming the necessity of the same, its basic objective in informing the public of the contents of the law was sufficiently accomplished when the DBM-DOH Joint Circular was published in the Philippine Star, a newspaper of general circulation, on December 29, 2012.[29]

As to petitioners' allegation of grave abuse of discretion on the part of respondent DOH Secretary in failing to include the Magna Carta benefits in his department's yearly budget, the same is belied by the fact that petitioners themselves specifically provided in their petition an account of the amounts allocated for the same in the years 2012 and 2013.[30]

Based on the foregoing, it must be recalled that administrative regulations., such as the DBM-DOH Joint Circular herein, enacted by administrative agencies to implement and interpret the law they are entrusted to enforce are entitled to great respect.[31] They partake of the nature of a statute and are just as binding as if they have been written in the statute itself. As such, administrative regulations have the force and effect of law and enjoy the presumption of legality. Unless and until they are overcome by sufficient evidence showing that they exceeded the bounds of the law,[32] their validity and legality must be upheld.

Thus, notwithstanding the contention that the Joint Resolution No. 4 promulgated by Congress cannot be a proper source of delegated power, the subject Circular was nevertheless issued well within the scope of authority granted to the respondents. The issue in this case is not whether the Joint Resolution No. 4 can become law and, consequently, authorize the issuance of the regulation in question, but whether the circular can be struck down as invalid for being tainted with grave abuse of discretion. Regardless, therefore, of the validity or invalidity of Joint Resolution No. 4, the DBM-DOH Joint Circular assailed herein cannot be said to have been arbitrarily or

capriciously issued for being consistent with prior issuances duly promulgated pursuant to valid and binding law.

Distinction must be made, however, with respect to the DBM-CSC Joint Circular, the contested provision of which states:

6.5 An official or employee authorized to be granted Longevity Pay under an existing law is not eligible for the grant of Step Increment Due to Length of Service.

A review of RA No. 7305 and its Revised IRR reveals that the law does not similarly impose such condition on the grant of longevity pay to PHWs in the government service. As such, the DBM-CSC Joint Circular effectively created a new imposition which was not otherwise stipulated in the law it sought to interpret. Consequently, the same exception granted to the DBM-DOH Joint Circular cannot be applied to the DBM-CSC Joint Circular insofar as the requirements on publication and submission with the UP Law Center - ONAR are concerned. Thus, while it was well within the authority of the respondents to issue rules regulating the grant of step increments as provided by RA No. 6758, otherwise known as the Compensation and Position Classification Act of 1989, which pertinently states:

Section 13. Pay Adjustments. - Paragraphs (b) and (c), Section 15 of Presidential Decree No. 985 are hereby amended to read as follows:

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(c) Step Increments - Effective January 1, 1990 step increments shall be granted based on merit and/or length of service in accordance with rules and regulations that will be promulgated jointly by the DBM and the Civil Service Commission,

and while it was duly published in the Philippine Star, a newspaper of general circulation, on September 15, 2012,[33] the DBM-CSC Joint Circular remains unenforceable for the failure of respondents to file the same with the UP Law Center - ONAR.[34] Moreover, insofar as the DBM-DOH Joint Circular similarly withholds the Step Increment due to length of service from those who are already being granted Longevity Pay, the same must likewise be declared unenforceable.[35]

Note also that the DBM-DOH Joint Circular must further be invalidated insofar as it lowers the hazard pay at rates below the minimum prescribed by Section 21 of RA No. 7305 and Section 7.1.5 (a) of its Revised IRR as follows:

SEC. 21. Hazard Allowance. - Public health worker in hospitals, sanitarium, rural health units, main centers, health infirmaries, barangay health stations, clinics and other health-related establishments located in difficult areas, strife-torn or embattled areas, distresses or isolated stations, prisons camps, mental hospitals, radiation-exposed clinics, laboratories or disease-infested areas or in areas declared under state of calamity or emergency for the duration thereof which expose them to great danger, contagion, radiation, volcanic activity/eruption occupational risks or perils to life as determined by the Secretary of Health or the Head of the unit with the approval of the Secretary of Health, shall be compensated hazard allowance equivalent to at least twenty-five percent (25%) of the monthly basic salary of health workers receiving salary grade 19 and below, and five percent (5%) for health workers with salary grade 20 and above.

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7.1.5. Rates of Hazard Pay

a. Public health workers shall be compensated hazard allowances equivalent to at least twenty five (25%) of the monthly basic salary of health workers, receiving salary grade 19 and below, and five percent (5%) for health workers with salary grade 20 and above. This may be granted on a monthly, quarterly or annual basis.

It is evident from the foregoing provisions that the rates of hazard pay must be at least 25% of the basic monthly salary of PWHs receiving salary grade 19 and below, and 5% receiving salary grade 20 and above. As such, RA No. 7305 and its implementing rules noticeably prescribe the minimum rates of hazard pay due all PWHs in the government, as is clear in the self-explanatory phrase "at least" used in both the law and the rules.[36] Thus, the following rates embodied in Section 7.2 of DBM-DOH Joint Circular must be struck down as invalid for being contrary to the mandate of RA No. 7305 and its Revised IRR:

7.2.1 For PWHs whose positions are at SG-19 and below, Hazard Pay shall be based on the degree of exposure to high risk or low risk hazards, as specified in sub-items 7.1.1 and 7.1.2 above, and the number of workdays of actual exposure over 22 workdays in a month, at rates not to exceed 25% of monthly basic salary. In case of exposure to both high risk and low risk hazards, the Hazard Pay for the month shall be based on only one risk level, whichever is more advantageous to the PWH.

7.2.2 PWHs whose positions are at SG-20 and above may be entitled to Hazard Pay at 5% of their monthly basic salaries for all days of exposure to high risk and/or low risk hazards. However, those exposed to high risk hazards for 12 or more days in a month may be entitled to a fixed amount of P4,989.75 per month.

Rates of Hazard Pay

Actual Exposure/ Level of Risk

High Risk

Low Risk

12 or more days

25% of monthly basic salary

14% of monthly basic salary

6 to 11 days

14% of monthly basic salary

8% of monthly basic salary

Less than 6 days

8% of monthly basic salary

5% of monthly basic salary

WHEREFORE, premises considered, the instant petition is PARTLY GRANTED. The DBM-DOH Joint Circular, insofar as it lowers the hazard pay at rates below the minimum prescribed by Section 21 of RA No. 7305 and Section 7.1.5 (a) of its Revised IRR, is declared INVALID. The DBM-CSC Joint Circular, insofar as it provides that an official or employee authorized to be granted Longevity Pay under an existing law is not eligible for the grant of Step Increment Due to Length of Service, is declared UNENFORCEABLE. The validity, however, of the DBM-DOH Joint Circular as to the qualification of actual exposure to danger for the PWHs entitlement to hazard pay, the rates of P50 and P25 subsistence allowance, and the entitlement to longevity pay on the basis of the PWHs status in the plantilla of regular positions, is UPHELD.

SO ORDERED.

Carpio,[*] Velasco, Jr., Leonardo-De Castro, Bersamin, Villarama, Jr., Perez, Mendoza, and Perlas-Bernabe, JJ., concur.

Brion, J., see separate opinion.

Leonen, J., see separate concurring and dissenting opinion.

Jardeleza, J., no part, prior OSG action.

Sereno, C.J., Del Castillo, and Reyes, JJ., official leave.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on July 28, 2015 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on August 14, 2015 at 9:17 a.m.

Very truly yours,

(SGD.)

FELIPA G. BORLONGAN-ANAMA

Clerk of Court

[*] Designated Acting Chief Justice per Special Order No. 2101 dated July 13, 2015.

[1] Annex "B" to Petition, rollo, pp. 67-83.

[2] Annex "A" to Petition, id. at 58-66.

[3] Republic Act No. 7305, Sec. 2.

[4] Emphasis ours.

[5] Section 35. Rules and Regulations. - The Secretary of Health after consultation with appropriate agencies of the Government as well as professional and health workers' organizations or unions, shall formulate and prepare the necessary rules and regulations to implement the provisions of this Act. Rules and regulations issued pursuant to this Section shall take effect thirty (30) days after publication in a newspaper of general circulation.

[6] Emphasis ours.

[7] Section 2. *supra* note 2.

[8] Section 6.5, id.

[9] Annex "C" to Petition, rollo, pp. 125-127.

[10] Emphasis ours.

[11] Metropolitan Bank and Trust Company, Inc. v. National Wages and Productivity Commission and Regional Tripartite Wages and Productivity Board-Region II, 543 Phil. 318, 328 (2007).

[12] Id. at 328-329.

[13] Dela Llana v. The Chairperson, Commission on Audit, G.R. No. 180989, February 7, 2012, 665 SCRA 176, 184, Liga ng mga Barangay National v. City Mayor of Manila, 465 Phil. 529 (2004), Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, 646 Phil. 452, 470-471 (2010).

[14] Chamber of Real Estate and Builders Associations, Inc. v. Secretary of Agrarian Reform, 635 Phil. 283, 304, citing Liga ng mga Barangay National v. City Mayor of Manila, supra, at 543.

[15] Id.

[16] Metropolitan Bank and Trust Company, Inc. v. National Wages And Productivity Commission And Regional Tripartite Wages And Productivity Board- Region II, supra note 11, at 329, citing De Guzman, Jr. v. Mendoza, 493 Phil. 690, 696 (2005); Sismaet v. Sabas, 473 Phil. 230, 239 (2004); Philippine Bank of Communications v. Torio, 348 Phil. 74, 84 (1998).

[17] Chamber of Real Estate and Builders Association, Inc. v. Secretary of Agrarian Reform, supra note 14, at 304-305.

[18] Metropolitan Bank and Trust Company, Inc. v. National Wages and Productivity Commission and Regional Tripartite Wages and Productivity Board-Region II, supra note 11, at 330.

[19] Yusay v. Court of Appeals, G.R. No. 156684, April 6, 2011, 647 SCRA 269, 277, citing Republic v. Yang Chi Hao, 617 Phil. 422, 425 (2009) and Chua v. Court of Appeals, 338 Phil. 262, 269 (1997).

[20] Holy Spirit Homeowners' Association, Inc. v. Sec. Defensor, 529 Phil. 573, 587 (2006).

[21] Emphasis ours.

[22] Supra note 4.

[23] Section 35. Rules and Regulations. - The Secretary of Health after consultation with appropriate agencies of the Government as well as professional and health workers' organizations or unions, shall formulate and prepare the necessary rules and regulations to implement the provisions of this Act. Rules and regulations issued pursuant to this Section shall take effect thirty (30) days after publication in a newspaper of general circulation. (Emphasis ours)

[24] National Association of Electricity Consumers for Reforms (NASECORE) v. Energy Regulatory Commission, 517 Phil. 23, 61-62 (2006).

[25] Association of Southern Tagalog Electric Cooperatives, Inc. (ASTEC), et al. v. Energy Regulatory Commission, G.R. Nos. 192117 and 192118, September 18, 2012, 681 SCRA 119, 151, citing Commissioner of Internal Revenue v. Court of Appeals, 329 Phil. 987, 1007 (1996).

[26] Id., citing The Veterans Federation of the Philippines v. Reyes 518 Phil. 668 704 (2006)

[27] Id.

[28] G.R. No. 190837, March 5, 2014.

[29] Rollo, p. 179.

[30] Id. at 47.

[31] Dacudao v. Secretary of Justice, G.R. No. 188056, January 8, 2013, 688 SCRA 109, 123, citing ABAKADA

Guro Party List v. Purisima, 584 Phil. 246, 283 (2008).

[32] Id.

[33] Rollo, p. 179.

[34] Araos, et. al. v. Hon. Regala, 627 Phil. 13, 22 (2010), citing GMA Network, Inc. v. Movie Television Review and Classification Board, 543 Phil. 178, 183 (2007).

[35] Section 9.5 of DBM-DOH Joint Circular provides:

9.5 On or after the effectivity of this JC, a PHW previously granted Step Increment Due to Length of Service shall no longer be granted subsequent Step Increment Due to Length of Service in view of the prohibition in item (4)(d) of said JR No. 4. Likewise, a PHW hired on or after the effectivity of this JC shall not be granted Step Increment Due to Length of Service.

[36] Re: Entitlement to Hazard Pay of SC Medical and Dental Clinic Personnel, 592 Phil. 389, 397 (2008).

SEPARATE OPINION

BRION, J.:

I write this Separate Opinion to present an alternative approach in resolving the present case. This alternative approach discusses (and raises questions about) the procedure that this Court observes in taking jurisdiction over petitions questioning quasi-legislative acts. In my view, the attendant facts of the present case and the ponencia's approach aptly illustrate the need to revisit our present approach.

In recent years, we have been relaxing the certiorari requirements of Rule 65 of the Rules of Court[1] to give due course to certiorari petitions assailing quasi-legislative acts. Awareness of the impact of this trend is crucial, since we can only act on the basis of the "judicial power" granted to us by the Constitution. In blunter terms, our present approach is necessarily rooted in, and must be consistent with, the constitutional definition of judicial power.

Judicial power, as defined under Section 1, Article VIII of the 1987 Constitution, includes "the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

Thus, in determining whether the Court should take jurisdiction over a case, it must, necessarily, first determine whether there is an actual controversy in which the Court can grant the appropriate relief through its judgment. This may involve private rights that are legally demandable and enforceable, or public rights, which involve the nullification of a governmental act that had been exercised without, or in excess of its, jurisdiction.

At present, we have been allowing petitions for certiorari and prohibition to assail a quasi-legislative act whenever we find a paramount importance in deciding the petitions.

This approach, in my view, has no essential relation to the question of whether an actual controversy exists; hence, its use as a standard in determining whether to take jurisdiction over a petition is inherently contrary to the requirements for the exercise of judicial power.

Factual antecedents

The present petition for certiorari and prohibition assails the validity of Joint Circular No. 1 dated November 29, 2012 of the Department of Budget and Management (DBM) and Department of Health (DOH), as well as Joint Circular dated September 3, 2012 of the DBM and Civil Service Commission (CSC).

The petitioners are officers and members of the Philippine Public Health Association, Inc. (PPHAI). On January 23, 2013, they sent a letter addressed to the respondents Secretary of Budget and Management and Secretary of Health, expressing their opposition to the Joint Circulars as they diminish the benefits granted to them by the Magna Carta of Public Health Workers (Republic Act No. 7305, hereinafter RA 7305).

Thereafter, the petitioners filed a Petition for Certiorari and Prohibition before this Court, imputing grave abuse of discretion on the respondents for issuing the joint circulars. According to the petitioners, the joint circulars had been issued with grave abuse of discretion for the following reasons:

(1)

the joint circulars impose additional requirements to the grant of hazard pay, i.e., it requires the PHWs' duties to expose them to danger, when RA 7305 does not require such condition;

(2)

the joint circulars unduly fix subsistence allowance at Php50 per day for full-time service and Php25 for part-time service, and these not in accordance with the prevailing circumstances required by RA 7305;

(3)

the joint circulars prematurely took effect on January 1, 2012;

(4)

longevity pay had been wrongfully granted only to regular plantilla positions, and unduly withheld the Step Increment due to Length of Service from those who have already been granted longevity pay. [Emphasis supplied.]

The ponencia aptly characterized the respondents' acts as quasi-legislative in nature; hence, they are acts not assailable through the writs of certiorari and prohibition under the strict terms of Rule 65 of the Rules of Court.

From this characterization, the ponencia proceeded to discuss the substantive issues raised in the petition to "finally resolve the doubt over the Joint Circulars' validity."

According to the ponencia, "the pressing issue of whether or not the joint circulars regulating the salaries and benefits relied upon by public health workers were tainted with grave abuse of discretion rightly deserves its prompt resolution."

The ponencia partially granted the petition, and held that the following aspects of the Joint Circulars are tainted with grave abuse of discretion: (1) the ineligibility of grantees of longevity pay from receiving the step increment due to length of service is unenforceable as it had not been published in the ONAR; and (2) the imposition of hazard pay below the minimum prescribed under RA 7305 is invalid.

The traditional approach in assailing
quasi-legislative acts

I agree with the ponencia's conclusion that the petitioners availed of an improper remedy to directly assail the Joint Circulars before the Court.

A writ of certiorari lies against judicial or quasi-judicial acts, while a writ of prohibition is the proper remedy to address judicial, quasi-judicial or ministerial acts. Hence, under these terms alone, the present petition is easily dismissible for having been an improper remedy.

Traditionally, the proper remedy to assail the validity of these joint circulars would have been through an ordinary action for nullification filed with the proper Regional Trial Court. Any allegation that the respondents are performing or threatening to perform functions without or in excess of their jurisdiction may appropriately be prevented or prohibited through a writ of injunction or a temporary restraining order.[2]

Had the petitioners availed of the proper remedy, then immediate recourse to this Court's original jurisdiction to issue a writ of certiorari or prohibition would have been avoided. While this Court has original jurisdiction to issue these extraordinary writs, this jurisdiction is shared with the Regional Trial Court and the Court of Appeals.

As a matter of policy, direct recourse to the Court is frowned upon and a violation of the policy renders a petition dismissible under the Doctrine of Hierarchy of Courts.

Despite the observed impropriety of remedies used, the ponencia proceeded to render its decision on the case, and partially granted it under the following dispositive portion:

WHEREFORE, premises considered, the instant petition is PARTLY GRANTED. The DBM-DOH Joint Circular, insofar as it lowers the hazard pay at rates below the minimum prescribed by Section 21 of RA No. 7305 and Section 7.1.5 (a) of its Revised IRR, is declared INVALID. The DBM-CSC Joint Circular, insofar as it provides that an official or employee authorized to be granted Longevity Pay under an existing law is not eligible for the grant of Step Increment Due to Length of Service, is declared UNENFORCEABLE. The validity, however, of the DBM-DOH Joint Circular as to the qualification of actual exposure to danger for PHW's entitlement to hazard pay, the rates Php50 and Php25 subsistence allowance, and the entitlement to longevity pay on the basis of the PHW's status in the plantilla of regular positions, is UPHELD.

The ponencia's approach in resolving the petition is not without precedent. Indeed, in the past, we have granted petitions for certiorari and prohibition that assail quasi-legislative acts despite the use of inappropriate remedies in questioning the quasi-legislative acts.

In granting the petitions and invalidating the questioned legislative act, we gave consideration to the "transcendental nature and paramount importance" of deciding the issues they raised. In some cases, we also invoked "compelling state interest" as reason to justify the early resolution of these issues,[3] and observed as well the need for the Court to make a final and definitive pronouncement on pivotal issues for everyone's enlightenment and guidance.[4]

The public importance of resolving
issues in a petition should not
determine whether the Court takes
jurisdiction over a case

In my view, the public importance of resolving the issues presented in a petition should not determine the Court's jurisdiction over a case, as public importance does not affect the subject matter of these petitions. That a petition relates to a matter of public importance does not make the abuse in the exercise of discretion any more or less grave.

For instance, we gave due course to the petitions for certiorari in *Review Center Association of the Philippines v. Executive Secretary*,[5] and in *Pharmaceutical and Healthcare Association of the Philippines v. Secretary of*

Health,[6] both of which assail quasi-legislative acts.

The administrative rules in these petitions carry different public policy reasons behind them, and I cannot see how these policy goals could have affected the fact that in both cases, the respondent administrative agency acted outside of its jurisdiction in issuing administrative rules that contradict with, or are not contemplated by, the laws they seek to implement.

In more concrete terms, the right to have access to quality education, which is the state interest in issuing the assailed Executive Order No. 566 in *Review Center Association of the Philippines v. Executive Secretary*,^[7] does not have any direct bearing on the fact that its provisions extended beyond the provisions of the laws it seeks to implement.

The same argument applies to Sections 4(f), 11 and 46 of Administrative Order No. 2006-0012, which had been invalidated through a certiorari petition in *Pharmaceutical and Healthcare Association of the Philippines v. Secretary of Health*.^[8] That the nation has an interest in promoting the breastfeeding of Filipino infants does not affect the authority of the Secretary of Health to issue administrative rules that are beyond what the Milk Code requires.

A law, by its very nature and definition, governs human conduct that is important to society.^[9] That the State, through Congress, found that a particular conduct should be regulated already speaks of the importance of, and need for, this regulation.

Necessarily, any deviation from this regulation carries some degree of importance to the public, because society, by agreeing to a regulation, has an interest that it be applied to all persons covered by the law, without exception.

Our Constitution has established how the need for regulation is identified, as well as the process for its formulation and implementation. The identification function has been given to Congress through the process of law-making. Implementation, on the other hand, has been given to the Executive. Our task in the Judiciary comes only in cases of conflict, either in the implementation of these laws or in the exercise of the powers of the two other branches of government.^[10]

This is how our republican, democratic system of government institutionalizes the doctrine of separation of powers, with each branch of government reigning supreme over its particular designation under the Constitution.^[11]

When we, as the Highest Court of the land, decree that an issue involving the implementation of a law is of paramount interest, does this declaration not teeter towards the role assigned for Congress, which possesses the plenary power to determine what needs are to be regulated and how the regulation should operate?

This problem, I believe, becomes even starker when we look at this phenomenon at the macro-level: when we, by exception, decide to take jurisdiction in some cases, and apply the general rule in others. Thereby, we, in effect, determine that public issues are more important or paramount than others.

Taking an active part in determining how public issues are prioritized is not part of the judicial power vested in the Court. We may do this tangentially, as the outcome of our cases could demonstrate public importance, but we cannot and should not make this outcome the basis of when we should exercise judicial power.

A survey of cases involving a petition for certiorari against a quasi-legislative act shows the uneven, and rather arbitrary, record of how we determine the paramount importance standard.

We have, in the past, relaxed the requirements for certiorari in petitions against the following quasi-legislative acts: (1) Commission on Audit Circular No. 89-299 lifting the pre-audit of government transactions of national

government agencies;[12] (2) Comelec Resolution No. 8678 considering any candidate holding public appointive office to have ipso facto resigned upon filing his or her Certificate of Candidacy;[13] (3) Comelec Resolution No. 9615 limiting the broadcast and radio advertisements of candidates and political parties for national election positions to an aggregate total of one hundred twenty (120) minutes and one hundred eighty (180) minutes, respectively;[14] (4) Executive Order No. 566 (EO 566) and Commission on Higher Education (CHED) Memorandum Order No. 30, series of 2007 (RIRR) directing the Commission on Higher Education to regulate the establishment and operation of review centers;[15] and (5) Administrative Order (A.O.) No. 2006-0012 implementing the Milk Code.[16]

On the other hand, we applied the strict requirements for a certiorari petition against the following: (1) Section 2.6 of the Distribution Services and Open Access Rules (DSOAR), which obligates certain customers to advance the amount needed to cover the expenses of extending lines and installing additional facilities[17] (2) Comelec Resolution No. 7798 prohibiting barangay officials and tanods from staying in polling places during elections[18] (3) Department of Agrarian Reform (DAR) Administrative Order (AO) No. 01-02, as amended by DAR AO No. 05-07 and DAR Memorandum No. 88 involving the reclassification of agricultural lands[19] (4) Executive Order No. 7 Directing the Rationalization of the Compensation and Position Classification System in Government Owned and Controlled Corporations and Government Financial Institutions;[20] and (5) the implementing rules and regulations (IRR) of Republic Act No. 9207, otherwise known as the “National Government Center (NGC) Housing and Land Utilization Act of 2003.”[21]

I believe that all these quasi-legislative acts involve matters that are important to the public. The Court is not in the position to weigh which of these regulations carried more importance than the others by exercising jurisdiction over petitions involving some of them and dismissing other petitions outright.

Who are we, for instance, to say that regulating review centers is more important than the conversion of agricultural lands? Or that the ipso facto resignation of public appointive officials running for office is more important than the prohibition against barangay officials to stay in polling places during the elections?

To my mind, these issues all affect our nation, and the Court cannot and should not impose any standard, unless the measure is provided in the Constitution or in our laws, to determine why one petition would be more important than another, such that the former deserves the relaxation of certiorari requirements.

Furthermore, the relaxation of certiorari requirements through the paramount importance exception affects our approach in reviewing cases brought to us on appeal. Our appellate jurisdiction reviews the decisions of the lower court for errors of law,[22] or errors of law and fact.[23]

In several cases,[24] however, we reversed the decision of the Court of Appeals denying a petition for certiorari against a quasi-legislative act based on the terms of the Rules of Court. In these reversals, we significantly noted the paramount importance of resolving the case on appeal and, on this basis, relaxed the requirements of the petition for certiorari filed in the lower court.

This kind of approach, to my mind, leads to an absurd situation where we effectively hold that the CA committed an error of law when it applied the rules as provided in the Rules of Court.

To be sure, when we so act, we send mixed and confusing signals to the lower courts, which cannot be expected to know when a certiorari petition may or should be allowed despite being the improper remedy.

Additionally, this kind of approach reflects badly on the Court as an institution, as it applies the highly arbitrary standard of ‘paramount importance’ in place of what is written in the Rules. A suspicious mind may even

attribute malicious motives when the Court invokes a highly subjective standard such as “paramount importance.”

The public, no less, is left confused by the Court’s uneven approach. Thus, it may not hesitate to file a petition that violates or skirts the margins of the Rules or its jurisprudence, in the hope that the Court would consider its presented issue to be of paramount importance and on this basis take cognizance of the petition.

Assailing quasi-legislative acts

through the Court’s expanded

jurisdiction

I believe that the better approach in handling the certiorari cases assailing quasi-legislative acts should be to treat them as petitions invoking the Court’s expanded jurisdiction. Thus, the standard in determining whether to exercise judicial power in these cases should be the petitioners’ prima facie that showing that the respondents committed grave abuse of discretion in issuing the quasi-legislative act.

Should the petitioners sufficiently prove, prima facie, a case for grave abuse of discretion, then the petition should be given due course. If not, then it should be dismissed outright. Through this approach, which the Court can institutionalize through appropriate rules, the traditional Rule 65 approach can be maintained, while providing for rules that sets the parameters to invoke the courts’ expanded jurisdiction to cover situations of grave abuse of discretion in any agency of the government.

Notably, most of the certiorari cases that applied the paramount importance exception eventually granted, or partially granted, the petition.[25] Thus, the Court, in giving due course to the petition must have observed that it had merit, and this initial determination was sufficient to bypass the requirements for a certiorari petition.

In other words, it was not the paramount importance of the issues presented that led the Court to decide on the case; it was - as in the present case - the initially shown possibility that the injuries claimed may be established and the remedies prayed for may be granted.

To cite a past example, the difference between the petitions assailing the quasi-legislative act placing review centers under the CHED’s regulation, and the act providing for the conversion of agricultural lands was not the former’s greater importance so that the rules was relaxed to give it due course. Their difference could be found in the potency of the issues they presented: in the former, there had been a prima facie showing of grave abuse of discretion, as shown by the eventual grant of the petition. In the latter, the prime facie grave abuse of discretion threshold was not met; thus, it was not given due course.

I have additionally observed that in several cases[26] dismissing the petition for certiorari against quasi-legislative acts, we even provided arguments against the substantive issues in these petitions. In these cases, we held the petition to be procedurally infirm (such that it warranted immediate dismissal), but at the same time noted that these petitions offer no substantive arguments against the assailed acts, such that the petition would not be granted even if we were to proceed to give it due course.

In light of these uneven approaches, I believe it to be more practical, and certainly less arbitrary, if we would only take jurisdiction over a certiorari petition involving a quasi-legislative act through an initial, cursory determination of whether there had been a prima facie showing of grave abuse of discretion.[27]

This approach of course should not affect the ordinary remedies that may be availed of to assail quasi-legislative acts before the lower courts. Certiorari, after all, remains to be an extraordinary writ, to be issued only when there is no other plain, speedy recourse.

Certiorari, additionally, lies only against acts of grave abuse of discretion – i.e., an act that is not only legally erroneous, but is often described as “arbitrary, capricious, whimsical, or blatantly in disregard of the law,” so that government official or agency acting on the matter is divested of jurisdiction.[28]

The respondents committed grave abuse of discretion in insisting that public health workers with a salary grade of 19 or lower should be given less than 25 percent of their salary as hazard pay.

I agree with the ponencia that the respondents committed grave abuse of discretion in formulating the hazard pay of public health workers with a salary grade of 19 or lower.

The joint circulars that the respondents formulated determine hazard pay depending on the actual exposure and level of risk that public health workers experience while at work. While the respondents possess the discretion to determine how hazard pay is formulated and to categorize it according to risk and exposure, the formulation should not be contrary to what the Magna Carta for Public Health Workers provides them.

The formulation of hazard pay under the joint circulars provides a hazard pay amounting to 25% of the PHW’s salary only when they are exposed to high risk hazard for 12 or more days. PHWs exposed during a lesser period to high or low risks receive lower hazard pay; the same goes for PHWs exposed to low risk for 122 or more days:

Actual Exposure/Level of Risk

High Risk

Low Risk

12 or more days

25% of monthly salary

14% of monthly salary

6 to 11 days

14% of monthly salary

8% of monthly salary

Less than 6 days

8% of monthly salary

5% of monthly salary

This formulation blatantly disregards the text of the Magna Carta, as well as jurisprudence interpreting this text.

RA 7305 provides that the hazard pay of public health workers with a salary grade of 19 or lower should be AT LEAST be 25% of their salary, viz:

Section 21. Hazard Allowance. - Public health workers in hospitals, sanitaria, rural health units, main health

centers, health infirmaries, barangay health stations, clinics and other health-related establishments located in difficult areas, strife-torn or embattled areas, distressed or isolated stations, prisons camps, mental hospitals, radiation-exposed clinics, laboratories or disease-infested areas or in areas declared under state of calamity or emergency for the duration thereof which expose them to great danger, contagion, radiation, volcanic activity/eruption, occupational risks or perils to life as determined by the Secretary of Health or the Head of the unit with the approval of the Secretary of Health, shall be compensated hazard allowances equivalent to at least twenty-five percent (25%) of the monthly basic salary of health workers receiving salary grade 19 and below, and five percent (5%) for health workers with salary grade 20 and above.

This provision had already been the subject of the Court's decision in *In Re Entitlement To Hazard Pay of SC Medical and Dental Clinic Personnel*,^[29] where the Court observed that:

In a language too plain to be mistaken, R.A. No. 7305 and its implementing rules mandate that the allocation and distribution of hazard allowances to public health workers within each of the two salary grade brackets at the respective rates of 25% and 5% be based on the salary grade to which the covered employees belong.

While the issue in *In Re Entitlement To Hazard Pay of SC Medical and Dental Clinic Personnel* involved hazard allowance for PHWs with a salary of SG 20 and above, the import of the decision is clear: the rates found in RA 7305 are the minimum rates prescribed for hazard pay, and the government cannot prescribe any rate lower than these.

That Joint Resolution No. 4 subsequently provided for a uniform benefits package for government employees does not affect existing Magna Carta benefits, including RA 7305. The Joint Resolution provides:

Nothing in this Joint Resolution shall be interpreted to reduce, diminish or in any way, alter the benefits provided for in existing laws on Magna Carta benefits for specific officials and employees in government, regardless of whether said benefits have already been received or have yet to be implemented.

A simple reading of these laws, as well as that of *In Re Entitlement To Hazard Pay of SC Medical and Dental Clinic Personnel* clearly shows that PHWs are entitled to the minimum rates for hazard pay provided in RA 7305.

By issuing Joint Circulars that completely disregard this rule, the respondents committed a patent and gross abuse of its discretion to formulate the amount payable for hazard pay; this disregard amounted to an evasion of its positive duty to implement RA 7305, particularly the minimum rates it prescribes for hazard pay.

Thus, the respondents committed grave abuse of discretion in enacting the Joint Circulars. Its provisions lowering the PHW's hazard pay below the minimum required in RA 7305 is thus void. Administrative rules cannot contradict the laws it implements, and in the present case, the contradiction against RA 7305 is an invalid act on the part of the respondents.

Given the existing grave abuse, it becomes easier and more reasonable to recognize this case as an exception to the doctrine of hierarchy of courts. This doctrine, of course, is a procedural matter that must reasonably yield when a greater substantive reason exists.

For these alternative reasons, I concur in the result and vote for the grant of the petition.

[1] Specifically, Rule 65, Section 1 on Certiorari, and Section 2 on Prohibition, viz.:

Section 1. Petition for certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course

of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

xxx xxx xxx

Section 2. Petition for prohibition. — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

xxx xxx xxx

[2] Holy Spirit Homeowners Association v. Defensor, 529 Phil. 573, 588 (2006).

[3] Quinto v. Comelec, G.R. No. 189698, December 1, 2009, 606 SCRA 258, 276.

[4] GMA Network v. Comelec, G.R. No. 205357, September 02, 2014, 734 SCRA 88, 125 – 126.

[5] G.R. No. 180046, 602 Phil. 342 (2009).

[6] G.R. No. 173034, 561 Phil. 386 (2007).

[7] Supra note 5.

[8] Supra note 6.

[9] The Black's Law Dictionary provides the following definitions of law:

1. That which is laid down, ordained, or established. A rule or method according to which phenomena or actions coexist or follow each other. 2. A system of principles and rules of human conduct, being the aggregate of those commandments and principles which are either prescribed or recognized by the governing power in an organized jural society as its will in relation to the conduct of the members of such society, and which it undertakes to maintain and sanction and to use as the criteria of the actions of such members. "Law" is a solemn expression of legislative will. It orders and permits and forbids. It announces rewards and punishments. Its provisions generally relate not to solitary or singular cases, but to what passes in the ordinary course of affairs. Civ. Code La. arts. 1. 2. "Law," without an article, properly implies a science or system of principles or rules of human conduct, answering to the Latin "jus;" as when it is spoken of as a subject of study or practice. In this sense, it includes the decisions of courts of justice, as well as acts of the legislature. The judgment of a competent, court, until reversed or otherwise superseded, is law, as much as any statute. Indeed, it may happen that a statute may be passed in violation of law, that is, of the fundamental law or constitution of a state; that it is the prerogative of courts in such cases to declare it void, or, in other words, to declare it not to be law. Rurrill. 3. A rule of civil conduct prescribed by the supreme power in a, state. 1 Steph. Comm. 25; Civ. Code Dak. Definition of Law, Black's Law Dictionary Website, at <http://thelawdictionary.org/letter/l/page/13/> (July 27, 2015).

[10] Belgica, et. al. v. Ochoa, G.R. No. 208566, November 19, 2013, 710 SCRA 1, 106 – 107.

[11] Angara v. Electoral Commission, 63 Phil 139, 156 – 157 (1936).

[12] Dela Llana v. COA, 681 Phil. 186 (2012).

[13] *Quinto v. Comelec*, 621 Phil. 236 (2009).

[14] *GMA Network v. Comelec*, G.R. No. 205357, September 02, 2014, 734 SCRA 88.

[15] *Review Center Association of the Philippines v. Ermita*, 602 Phil. 342 (2009).

[16] *Pharmaceutical and Healthcare Association of the Philippines v. Secretary of Health*, 561 Phil. 386 (2007).

[17] *CREBA v. ERC*, 638 Phil. 542 (2010).

[18] *Concepcion v. Comelec*, 609 Phil. 201 (2009).

[19] *CREBA v. Secretary of Agrarian Reform*, 635 Phil. 283 (2010).

[20] *Galicto v. Aquino*, G.R. No. 193978, February 28, 2012, 667 SCRA 150.

[21] *Supra* note 2.

[22] Rule 45 of the Rules of Court limits the issues in appeal by certiorari to the Supreme Court to questions of law, viz:

Section 1. Filing of petition with Supreme Court. — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth. (1a, 2a)

[23] Jurisprudence teaches us that "(a)s a rule, the jurisdiction of this Court in cases brought to it from the Court of Appeals is limited to the review and revision of errors of law allegedly committed by the appellate court, as its findings of fact are deemed conclusive. As such this Court is not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below. This rule, however, is not without exceptions." The findings of fact of the Court of Appeals, which are as a general rule deemed conclusive, may admit of review by this Court:

- (1) when the factual findings of the Court of Appeals and the trial court are contradictory;
- (2) when the findings are grounded entirely on speculation, surmises, or conjectures;
- (3) when the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible;
- (4) when there is grave abuse of discretion in the appreciation of facts;
- (5) when the appellate court, in making its findings, goes beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;
- (6) when the judgment of the Court of Appeals is premised on a misapprehension of facts;
- (7) when the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion;
- (8) when the findings of fact are themselves conflicting;
- (9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and
- (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings

are contradicted by the evidence on record. *Fuentes v. CA*, G.R. No. 109849, February 26, 1997.

[24] See, as examples, the following cases: *Metropolitan Bank and Trust Company v. National Wages Productivity Commission*, 543 Phil. 318 (2007) and *Equi-Asia Placement v. DFA*, 533 Phil. 590 (2006).

[25] See *Quinto v. Comelec*, supra note 13; *Review Center Association of the Philippines v. Ermita*, supra note 15; and *Pharmaceutical and Healthcare Association of the Philippines v. Secretary of Health*, supra note 16.

[26] *CREBA v Secretary of Agrarian Reform*, supra note 19 and *Holy Spirit Home Owners Association v. Defensor*, supra note 21.

[27] See J. Brion's discussion on the Power of Judicial Review in his Concurring Opinion in *Imbong v. Executive Secretary*, G.R. No.204819, April 8, 2014, 721 SCRA 146, 489 – 491.

[28] The term grave abuse of discretion is defined as “a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.” *Office of the Ombudsman v. Magno*, G.R. No. 178923, November 27, 2008, 572 SCRA 272, 286-287 citing *Microsoft Corporation v. Best Deal Computer Center Corporation*, 438 Phil. 408, 414 (2002); *Suliguin v. Commission on Elections*, G.R. No. 166046, March 23 2006, 485 SCRA 219, 233; *Natalia Realty, Inc. v. Court of Appeals*, 440 Phil. 1, 19-20 (2002); *Philippine Rabbit Bus Lines, Inc. v. Goimco, Sr.*, 512 Phil. 729, 733-734 (2005) citing *Land Bank of the Philippines v. Court of Appeals*, 456 Phil. 755, 786 (2003); *Duero v. Court of Appeals*, 424 Phil. 12, 20 (2002) citing *Cuison v. Court of Appeals*, G.R. No. 128540, April 15, 1998, 289 SCRA 159, 171.

[29] A.M. No. 03-9-02-SC, 592 Phil. 389 (2008).

CONCURRING and DISSENTING OPINION

LEONEN, J.:

I concur in the result with regard to the declaration that several provisions in the joint circulars are invalid and unenforceable. However, with much regret, I cannot join the ponencia.

The remedy sought by petitioners should be granted. The joint circulars promulgated by the Department of Budget and Management were issued with grave abuse of discretion because it contravened the provisions of Republic Act No. 7305,[1] also known as the Magna Carta of Public Health Workers.

I

Certiorari and Prohibition are available remedies when there is a proper allegation of breach of a constitutional provision and an actual case or controversy that can narrow the formulation of the relevant doctrines.

Article VIII, Section 1, paragraph 2 of the 1987 Constitution states that:

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (Emphasis supplied)

In *Tañada v. Angara*,[2] this court's duty was characterized as follows:

As explained by former Chief Justice Roberto Concepcion, “the judiciary is the final arbiter on the question of

whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.”

As this Court has repeatedly and firmly emphasized in many cases, it will not shirk, digress from or abandon its sacred duty and authority to uphold the Constitution in matters that involve grave abuse of discretion brought before it in appropriate cases, committed by any officer, agency, instrumentality or department of the government.

As the petition alleges grave abuse of discretion and as there is no other plain, speedy or adequate remedy in the ordinary course of law, we have no hesitation at all in holding that this petition should be given due course and the vital questions raised therein ruled upon under Rule 65 of the Rules of Court. Indeed, certiorari, prohibition and mandamus are appropriate remedies to raise constitutional issues and to review and/or prohibit/nullify, when proper, acts of legislative and executive officials. On this, we have no equivocation.[3] (Citations omitted)

In addition, this court recently clarified in *Araullo v. Aquino III*:^[4]

With respect to the Court, however, the remedies of certiorari and prohibition are necessarily broader in scope and reach, and the writ of certiorari or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions. This application is expressly authorized by the text of the second paragraph of Section 1, [Article VIII of the 1987 Constitution].^[5]

The Department of Budget and Management promulgated joint circulars in clear and patent breach of Republic Act No. 7305. The joint circulars appear to be based on Joint Resolution No. 4, Series of 2009, which amended several laws.^[6] The implementation of the joint circulars is imminent and affects a critical sector of government employees. The parties’ positions have thus become sufficiently adversarial and properly framed within clear factual ambients.

II

Republic Act No. 7305 specifically provides that the Management-Health Workers’ Consultative Council must be consulted for the computation and grant of allowances to public health workers. Consultation is clearly statutory. The pertinent provisions of Republic Act No. 7305 provide:

SEC. 22. Subsistence Allowance. — Public health workers who are required to render service within the premises of hospitals, sanitarium, health infirmaries, main health centers, rural health units and barangay health stations, or clinics, and other health-related establishments in order to make their services available at any and all times, shall be entitled to full subsistence allowance of three (3) meals which may be computed in accordance with prevailing circumstances as determined by the Secretary of Health in consultation with the Management-Health Workers’ Consultative Councils, as established under Section 33 of this Act: Provided, That representation and travel allowance shall be given to rural health physicians as enjoyed by municipal agriculturists, municipal planning and development officers and budget officers.

.....

SEC. 33. Consultation with Health Workers’ Organizations. — In the formulation of national policies governing the social security of public health workers, professional and health workers’ organizations or union as well as other appropriate government agencies concerned shall be consulted by the Secretary of Health. For this purpose, Management-Health Workers’ Consultative Councils for national, regional and other appropriate

levels shall be established and operationalized. (Emphasis supplied)

However, it appears that the joint circulars were issued without the Secretary of the Department of Health consulting with the Management-Health Workers' Consultative Council. It also appears that the assailed joint circulars[7] were issued pursuant to Joint Circular No. 4, Series of 2009.[8] Joint Resolution No. 4 is entitled "Joint Resolution Authorizing the President of the Philippines to Modify the Compensation and Position Classification System of Civilian Personnel and the Base Pay Schedule of Military and Uniformed Personnel in the Government, and for Other Purposes." [9]

Item 6[10] of Joint Resolution No. 4 removed the requirement that the Secretary of the Department of Health should discuss with consultative councils the rates of allowances and the release of Magna Carta benefits. This was also reflected in Provision 1.1 of Department of Budget and Management-Department of Health Joint Circular No. 1, Series of 2012,[11] which states:

1.0 Background Information

.....

1.2

On the other hand, Item (6), "Magna Carta Benefits," of the Senate and House of Representatives Joint Resolution (JR) No. 4, s. 2009, approved on June 17, 2009, "Joint Resolution Authorizing the President of the Philippines to Modify the Compensation and Position Classification System of Civilian Personnel and the Base Pay Schedule of Military and Uniformed Personnel in the Government, and for Other Purposes," provides among others, that the Department of Budget and Management (DBM), in coordination with the agencies concerned, shall determine the qualifications, conditions, and rates in the grant of said benefits, and to determine those that may be categorized under the Total Compensation Framework. It further states that the consultative councils, departments, and officials previously authorized to issue the implementing rules and regulations of Magna Carta benefits shall no longer exercise said functions relative to the grant of said benefits.

1.3

Pursuant to the compensation principles espoused in the said JR No. 4, the grant of compensation-related Magna Carta benefits to PHWs needs to be rationalized to ensure equity and uniformity in remuneration. (Emphasis supplied)

The creation of consultative councils for public health workers was a significant right granted in Republic Act No. 7305. Section 22 of Republic Act No. 7305 required the Secretary of the Department of Health to consult with the Management-Health Workers' Consultative Council to provide for the computation of subsistence allowances. The concept of this consultative council was clearly articulated in Section 33. The participation of health workers in the drafting of the guidelines empowered them. It also achieved several purposes, which included ensuring immediate feedback from health workers, and thus increasing the possibility of improving the overall efficiency of all health agencies.

Announced as part of the package of rights in Republic Act No. 7305, the Management-Health Workers' Consultative Council was taken away piecemeal by a broadly entitled joint resolution. The validity of Joint Resolution No. 4 was suspect because it revised several laws and was passed by Congress in a manner not provided by the Constitution.[12]

Department of Budget and Management-Civil Service Commission Joint Circular No. 1, Series of 2012,[13] also cites Joint Resolution No. 4, Series of 2009, as follows:

1.0 Background

Item (4)(d) of the Senate and House of Representatives Joint Resolution No. 4, s. 2009, “Joint Resolution Authorizing the President of the Philippines to Modify the Compensation and Position Classification System of Civilian Personnel and the Base Pay Schedule of Military and Uniformed Personnel in the Government, and for Other Purposes,” approved by the President of the Philippines on June 17, 2009, provides as follows:

(d) Step Increments – An employee may progress from Step 1 to Step 8 of the salary grade allocation of his/her position in recognition of meritorious performance based on a Performance Management System approved by the CSC and/or through length of service, in accordance with the rules and regulations to be promulgated jointly by the DBM and the CSC.

Employees authorized to receive Longevity Pay under existing laws shall no longer be entitled to Step Increments Due to Length of Service. The grant of Step Increment based on Merit and Performance shall be in lieu of the Productivity Incentive Benefit.

Joint resolutions are not sufficient to notify the public that a statute is being passed or amended. As in this case, the amendment to a significant empowering provision in Republic Act No. 7305 was done through a joint resolution. The general public will be misled when it attempts to understand the state of the law since it will also have to comb through joint resolutions in order to ensure that published Republic Acts have not been amended.

III

Another instance showing grave abuse of discretion is that Department of Budget and Management-Department of Health Joint Circular No. 1, Series of 2012 provides for rates of hazard pay that are lower than the minimum provided under Republic Act No. 7305.[14] This was recognized in the ponencia when it held that the rates of hazard pay must be invalidated for contravening Republic Act No. 7305.[15]

IV

Petitioners further argue that the assailed joint circulars are null and void because these were not published in accordance with the 30-day period as required by Republic Act No. 7305. The ponencia addresses this issue as follows:

Indeed, publication, as a basic postulate of procedural due process, is required by law in order for administrative rules and regulations to be effective. There are, however, several exceptions, one of which are interpretative regulations which “need nothing further than their bare issuance for they give no real consequence more than what the law itself has already prescribed.” These regulations need not be published for they add nothing to the law and do not affect substantial rights of any person.

.....

In this case, the DBM-DOH Joint Circular in question gives no real consequence more than what the law itself had already prescribed. . . . There is really no new obligation or duty imposed by the subject circular for it merely reiterated those embodied in RA No. 7305 and its Revised IRR. The Joint Circular did not modify, amend nor supplant the Revised IRR, the validity of which is undisputed. Consequently, whether it was duly published and filed with the UP Law Center – ONAR is necessarily immaterial to its validity because in view of the pronouncements above, interpretative regulations, such as the DBM-DOH circular herein, need not be published nor filed with the UP Law Center – ONAR in order to be effective. Neither is prior hearing or consultation mandatory.[16] (Citations omitted)

The ponencia further discusses that in any case, the Department of Budget and Management-Department of Health Joint Circular No. 1, Series of 2012, was published in the Philippine Star on December 29, 2012.[17]

Section 35 of Republic Act No. 7305 states:

SEC. 35. Rules and Regulations. — The Secretary of Health after consultation with appropriate agencies of the Government as well as professional and health workers' organizations or unions, shall formulate and prepare the necessary rules and regulations to implement the provisions of this Act. Rules and regulations issued pursuant to this Section shall take effect thirty (30) days after publication in a newspaper of general circulation.

Republic Act No. 7305 is explicit that rules and regulations “take effect thirty (30) days after publication.” While Department of Budget and Management-Department of Health Joint Circular No. 1, Series of 2012, provided for its own date of effectivity, it cannot amend what is provided in the law it implements. In this case, the circular took effect after the lapse of only three (3) days.

Moreover, Republic Act No. 7305 is a law while Department of Budget and Management-Department of Health Joint Circular No. 1, Series of 2012, is an administrative circular. As we ruled in *Trade and Investment Development Corporation of the Philippines v. Civil Service Commission*,^[18] an administrative circular cannot amend the provisions of a law.

While rules issued by administrative bodies are entitled to great respect, “[t]he conclusive effect of administrative construction is not absolute. [T]he function of promulgating rules and regulations may be legitimately exercised only for the purpose of carrying the provisions of the law into effect. x x x [A]dministrative regulations cannot extend the law [nor] amend a legislative enactment; x x x administrative regulations must be in harmony with the provisions of the law[,]” and in a conflict between the basic law and an implementing rule or regulation, the former must prevail.^[19] (Emphasis supplied, citation omitted)

V

I agree with the ponencia that the Department of Budget and Management-Civil Service Commission Joint Circular No. 1, Series of 2012, is unenforceable because it has not been deposited with the Office of the National Administrative Register at the University of the Philippines Law Center.^[20] However, it is my opinion that Department of Budget and Management-Department of Health Joint Circular No. 1, Series of 2012, should also be deposited with the Office of the National Administrative Register before it can be validly enforced.

Book VII, Chapter 2, Section 3 of the Administrative Code^[21] provides that:

SECTION 3. Filing.—(1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from that date shall not thereafter be the basis of any sanction against any party or persons.

(2) The records officer of the agency, or his equivalent functionary, shall carry out the requirements of this section under pain of disciplinary action.

(3) A permanent register of all rules shall be kept by the issuing agency and shall be open to public inspection.

Book VII, Chapter 1, Section 2 of the Administrative Code defines “rule” as:

SECTION 2. Definitions.—As used in this Book:

(2) “Rule” means any agency statement of general applicability that implements or interprets a law, fixes and describes the procedures in, or practice requirements of, an agency, including its regulations. The term includes memoranda or statements concerning the internal administration or management of an agency not affecting the rights of, or procedure available to, the public.

The assailed joint circulars can be considered as “rules” that must be deposited with the Office of the National

Administrative Register. These circulars provide guidelines for the implementation of the benefits provided under Republic Act No. 7305.

The publication of the assailed joint circulars in a newspaper of general circulation does not remove the requirement of the Administrative Code that the circulars must be deposited with the Office of the National Administrative Register. The pertinent portion of the Guidelines for Receiving and Publication of Rules and Regulations Filed with the UP Law Center[22] provides:

2. All rules and regulations adopted after the effectivity of the Administrative Code of 1987, which date is on November 23, 1989, must be filed with the U.P. Law Center by either the adopting agency or the implementing agency of the Executive Department authorized to issue rules and regulations and said rules and regulations shall be effective, in addition to other rule-making requirements by law not inconsistent with the provisions of this Code, fifteen days from the date of their filing with the U.P. Law Center unless a different date is fixed by law, or specified in the rule in cases of imminent danger to public health, safety, and welfare, the existence of which must be expressed in a statement accompanying the rule. The agency shall take appropriate measures to make emergency rules known to persons who may be affected by them.

The agency should be advised to inform the U.P. Law Center of the date of effectivity of each rule and when publication in a newspaper is required, to furnish the date/dates of the newspapers where published. In such a case the counting should be reckoned with the last date of publication.[23] (Emphasis supplied)

VI

Admittedly, not all administrative issuances are required to be filed with the Office of the National Administrative Register.[24] Nevertheless, it is my opinion that the circulars in this case affect third parties. The hazard pay and other benefits of public health workers affect third parties because the grant of these benefits involves the use of public funds.

Parenthetically, all Department of Budget and Management circulars affect the public because the Department's circulars involve the use of public funds collected from taxpayers. Hence, all Department of Budget and Management circulars must be deposited with the Office of the National Administrative Register.[25] Taxpayers have the right to know where public funds were used and for what reasons. There is no harm in requiring that circulars be deposited with the Office of the National Administrative Register. In fact, the requirement that rules must be deposited with the Office of the National Administrative Register can be easily complied with. To opt not to deposit a rule with the Office of the National Administrative Register is suspect for the public has the right to be informed of government rules and regulations, more so if the rule involves the use of public funds.

ACCORDINGLY, I concur in the result.

[1] Rep. Act No. 7305 was approved on March 26, 1992.

[2] 338 Phil. 546 (1997) [Per J. Panganiban, En Banc].

[3] Id. at 574–575.

[4] 728 Phil. 1 (2014) [Per J. Bersamin, En Banc].

[5] Id. at 74.

[6] Joint Resolution No. 4 amends the following laws: Rep. Act No. 7305 (1992) or the Magna Carta of Public Health Workers; Rep. Act No. 4670 (1966) or the Magna Carta for Public School Teachers; Rep. Act No. 8439

(1997) or the Magna Carta for Scientists, Engineers, Researchers and Other Science and Technology Personnel in Government; Rep. Act No. 9433 (2007) or the Magna Carta for Public Social Workers; Rep. Act No. 8551 (1998) or the Philippine National Police Reform and Reorganization Act of 1998; Exec. Order No. 107 (1999) or Specifying the Salary Grades of the Officers and Enlisted Personnel of the Philippine National Police pursuant to Section 36 of Republic Act No. 8551, otherwise known as the Philippine National Police Reform and Reorganization Act of 1998; Rep. Act No. 9166 (2002) or An Act Promoting the Welfare of the Armed Forces of the Philippines by Increasing the Rate of Base Pay and other Benefits of its Officers and Enlisted Personnel and for Other Purposes; Rep. Act No. 9286 (2004) or An Act Further Amending Presidential Decree No. 198, otherwise known as The Provincial Water Utilities Act of 1973, as amended; Rep. Act No. 7160 (1991) or the Local Government Code of 1991; Rep. Act No. 9173 (2002) or the Philippine Nursing Act of 2002.

[7] The assailed joint circulars are Department of Budget and Management-Civil Service Commission Joint Circular No. 1, Series of 2012, and Department of Budget and Management-Department of Health Joint Circular No. 1, Series of 2012.

[8] Ponencia, p. 7.

[9] Joint Resolution No. 4 was dated July 28, 2008 and was approved by then President Gloria Macapagal-Arroyo on June 17, 2009.

[10] Joint Resolution No. 4 (2008), item 6 provides:

(6) Magna Carta Benefits – Within ninety (90) days from the effectivity of this Joint Resolution, the DBM is hereby authorized to issue the necessary guidelines, rules and regulations on the grant of Magna Carta benefits authorized for specific officials and employees in the government to determine those that may be categorized in the Total Compensation Framework.

Nothing in this Joint Resolution shall be interpreted to reduce, diminish or, in any way, alter the benefits provided for in existing laws on Magna Carta benefits for specific officials and employees in government, regardless of whether said benefits have been already received or have yet to be implemented.

The DBM, in coordination with the agencies concerned, shall determine the qualifications, conditions and rates in the grant of said benefits. Accordingly, the consultative councils, departments and officials previously authorized to issue the implementing rules and regulations of Magna Carta benefits shall no longer exercise said function relative to the grant of such benefits. (Emphasis supplied)

[11] Rules and Regulations on the Grant of Compensation-Related Magna Carta Benefits to Public Health Workers (PHWs) (2012).

[12] Const., art. VI, secs. 26 and 27 provide:

SECTION 26. (1) Every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof.

(2) No bill passed by either House shall become a law unless it has passed three readings on separate days, and printed copies thereof in its final form have been distributed to its Members three days before its passage, except when the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency. Upon the last reading of a bill, no amendment thereto shall be allowed, and the vote thereon shall be taken immediately thereafter, and the yeas and nays entered in the Journal. (Emphasis supplied).

SECTION 27. (1) Every bill passed by the Congress shall, before it becomes a law, be presented to the President. If he approves the same, he shall sign it; otherwise, he shall veto it and return the same with his objections to the

House where it originated, which shall enter the objections at large in its Journal and proceed to reconsider it. If, after such reconsideration, two-thirds of all the Members of such House shall agree to pass the bill, it shall be sent, together with the objections, to the other House by which it shall likewise be reconsidered, and if approved by two-thirds of all the Members of that House, it shall become a law. In all such cases, the votes of each House shall be determined by yeas or nays, and the names of the Members voting for or against shall be entered in its Journal. The President shall communicate his veto of any bill to the House where it originated within thirty days after the date of receipt thereof; otherwise, it shall become a law as if he had signed it.

(2) The President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object. (Emphasis supplied)

On the other hand, the House Rules of the House of Representatives specifically provides:

Section. 58. Third Reading. . . .

No bill or joint resolution shall become law unless it passes three (3) readings on separate days and printed copies thereof in its final form are distributed to the Members three (3) days before its passage except when the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency. (Emphasis supplied)

With the insertion of “joint resolution,” it seems that Congress intercalated a procedure not sanctioned by the Constitution.

[13] Rules and Regulations on the Grant of Step Increment/s Due to Meritorious Performance and Step Increment Due to Length of Service (2012).

[14] Rollo, pp. 32–33.

[15] Ponencia, p. 16.

[16] *Id.* at 11–14.

[17] *Id.* at 14.

[18] 692 SCRA 384 (2013) [Per J. Brion, En Banc].

[19] *Id.* at 399.

[20] Ponencia, p. 15.

[21] Exec. Order No. 292 (1987).

[22] Guidelines for Receiving and Publication of Rules and Regulations Filed with the UP Law Center <http://law.upd.edu.ph/index.php?option=com_content&view=category&id=324&Itemid=509> (visited April 6, 2015).

[23] *Id.*

[24] The Guidelines for Receiving and Publication of Rules and Regulations Filed with the UP Law Center provide:

9. Rules and Regulations which need not be filed with the U.P. Law Center, shall, among others, include but not be limited to, the following:

a) Those which are interpretative regulations and those merely internal in nature, that is, regulating only the personnel of the Administrative agency and not the public;

- b) Instructions on the case studies made in petitions for adoption;
- c) Rules laid down by the head of a government agency on the assignments or workload of his personnel or the wearing of uniforms;
- d) Rules and regulations affecting only a particular or specific sector and circularized to them;
- e) Instructions by administrative supervisors concerning the rules and guidelines to be followed by their subordinates in the performance of their duties;
- f) Memoranda or statements concerning the internal administration or management of an agency not affecting the rights of, or procedure available to, the public;
- g) Memoranda or circulars merely disseminating any law, executive order, proclamation, and issuances of other government agencies.

[25] A comparison of the issuances published by the Office of the National Administrative Register <http://law.upd.edu.ph/index.php?option=com_content&view=category&id=324&Itemid=509> visited April 6, 2015) and the issuances uploaded on the Department of Budget and Management's website <http://www.dbm.gov.ph/?page_id=815> (visited April 6, 2015) show that there were years when the Department of Budget and Management did not file copies of its circulars with the Office of the National Administrative Register.

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