

UNION SCHOOL INTERNATIONAL REPRESENTED BY PASTOR ABRAHAM CHO [SCHOOL SUPERINTENDENT], JAIME NABUA [BOARD PRESIDENT], AND JENNIFER MANDAPAT [SCHOOL HEAD], PETITIONERS, V. CHARLEY...

G.R. No. 234186. November 21, 2018

Ponente: TIJAM, J.

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TIJAM, J.:

The Court resolves the petition for review on certiorari[1] under Rule 45 of the Rules of Court filed by Union School International (Union School), represented by School Superintendent Pastor Abraham Cho (Cho), Board President Jaime Nabua (Nabua), and Jennifer Mandapat (Mandapat), (collectively referred to as petitioners), assailing the Decision[2] dated November 10, 2016 and the Resolution[3] dated May 17, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 133482, finding that Union School illegally dismissed respondent Charley Jane Dagdag (Dagdag) from her employment.

Facts of the Case

Dagdag was employed as an Elementary School Teacher on a probationary status by Union School from July 16, 2012 to May 31, 2013. During her employment, or on November 23, 2012, she found out that she was eight weeks and five days pregnant. Soon thereafter, Dagdag informed Mandapat of her pregnancy and that the father of the child was marrying another woman. As Dagdag was single, the matter of being charged with gross immorality and Dagdag's resignation was discussed.[4]

On December 3, 2012, Dagdag did not report for work without informing the school earlier of her absence. She was then suspended for four days for abandonment of work. In addition, a suspension of one day was likewise imposed as this was her second offense of absence without official leave.[5]

On December 12, 2012, Dagdag received a copy of a notice addressed to the members of the Grievance Committee to attend to a Teacher's Disciplinary Committee on December 14, 2012 regarding the disciplinary action against her for gross immorality. The notice indicated that she was advised to nominate her representative from the current full-time staff of the school. For her failure to attend the same, however, the hearing was rescheduled on December 17, 2012.[6]

During the hearing, Dagdag acknowledged the contents of the school's Faculty and Staff Handbook, which includes the offense on gross immorality and the Professional Code of Ethics for Teachers. She was apprised of the possible consequences if she will be dismissed from service as it might affect her next job application as compared to resigning which, petitioners thought, was a better option. Dagdag then agreed to resign. The Minutes of the hearing also stated that she consulted her mother and relatives and that she was accepting dismissal as a disciplinary action but she will wait for the decision of the school.[7]

On the same date, Dagdag filed a complaint against petitioners for illegal dismissal, non-payment of salaries and

benefits, moral and exemplary damages, and attorney's fees.[8]

Meanwhile, prior to the scheduled mandatory conference, Dagdag received a Memorandum dated December 19, 2012 from petitioners regarding her alleged violations discussed during the grievance committee meeting. Dagdag was required to submit her explanation on why she should not be dismissed. For her failure to submit the required written explanation, however, the grievance committee recommended her termination from the service.[9]

For its part, Union School denied the accusations of Dagdag and maintained that they did not suspend, transfer, demote, or prevent Dagdag from performing her work as a result of her pregnancy out of wedlock.[10]

On June 7, 2013, the Labor Arbiter (LA) issued its Decision,[11] wherein it found that Dagdag was illegally dismissed from employment. The LA maintained that Union School committed acts of persecution, discrimination, insensitivity and disdain when Dagdag was coerced into resigning from her job after having admitted to Mandapat that she was pregnant out of wedlock with no intentions of getting married to the father of her child as he had already married another woman. The fallo of the Decision, reads:

WHEREFORE, premises duly considered, judgment is hereby rendered finding [Dagdag] constructively dismissed.

[Union School] and [Mandapat] shall pay [Dagdag] jointly and severally the following:

- Backwages inclusive of all benefits and allowances amounting to P59,627.50;
- Moral damages amounting to P50,000.00;
- Exemplary damages amounting [to] P30,000.00; and
- Attorney's fees amounting to P5,962.75.

All other claims are dismissed for lack of basis.

SO ORDERED.[12]

On appeal, the National Labor Relations Commission (NLRC) issued its Decision[13] dated September 13, 2013, wherein it vacated the decision of the LA and dismissed the complaint for illegal dismissal and money claims of Dagdag for lack of merit.

In reversing the Decision of the LA, the NLRC held that there was no evidence that Dagdag was ever subjected to persecution or contempt after she reported her pregnancy; hence, she failed to prove by substantial evidence that she was constructively dismissed. The dispositive portion of the Decision, reads:

WHEREFORE, the appeal is hereby declared with merit. The assailed decision is hereby VACATED and the case dismissed for lack of merit.

[Union School] however is hereby ordered to pay [Dagdag's] salary corresponding to the period December 1-17, 2012 and 13[th] month pay in the amount of P10,370.00.

SO ORDERED.[14]

Aggrieved, the matter was elevated to the CA via a Petition for Certiorari under Rule 65.

In its Decision[15] dated November 10, 2016, the CA annulled and set aside the ruling of the NLRC. The CA maintained that Dagdag was illegally dismissed from service as the minutes of the grievance meeting disclosed that she was only given two options — to resign or to be dismissed from service, upon Union School's finding of her pregnancy out of wedlock. As such, the CA held that it constituted a violation under Article 135[16] of the

Labor Code which prohibits the employer to discharge a woman employee on account of her pregnancy, to wit:

WHEREFORE, the petition is GRANTED. The decision of the [NLRC] dated September 30, 2013, and resolution dated October 30, 2013 in NLRC LAC No. 07-002158-13 (NLRC RAB CAR Case No. 12-0314-12) are ANNULLED and SET ASIDE.

[Union School] is declared to have committed illegal dismissal and is ORDERED to pay [Dagdag] the following: (a) separation pay in lieu of actual reinstatement equivalent to one (1) month pay for every year of service, with a fraction of at least six (6) months considered as one (1) whole year from the date of her dismissal on December 17, 2012 up to the finality of this decision; (b) full backwages from the time of her illegal dismissal up to the finality of this decision; and (c) attorney's fees equivalent to ten percent (10%) of the total monetary award. The monetary awards herein granted shall earn legal interest at the rate of six percent (6%) per annum from the date of the finality of this decision until fully paid. The case is REMANDED to the [LA] for computation of [Dagdag's] monetary awards.

SO ORDERED.[17]

A Motion for Reconsideration[18] was filed by the petitioners but it was subsequently denied in a Resolution[19] dated May 17, 2017.

Hence, the instant petition.

Ruling of the Court

The petition is without merit.

"[Constructive dismissal [is] a cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or diminution in pay or both; or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee.]"[20] "The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his employment/position under the circumstances." [21]

As aptly observed by the CA, Mandapat's act of suggesting that Dagdag should simply tender her resignation, as the school may impose harsher penalties, left Dagdag with no choice but to discontinue working for Union School. Also, the CA noted that although there was a conduct of grievance meeting, its outcome was already predetermined as petitioners were already resolute in their decision to terminate Dagdag's employment. This is evident by the fact that Dagdag was left with two choices—resignation or dismissal and threatening her with possible revocation of her teaching license.

Indeed, Dagdag agreed to resign because her actuation was perceived by petitioners as a ground for the revocation of her license as a teacher. Such license serves as a permit for Dagdag to secure an employment and find a means of livelihood.

Be that as it may, it appears that the grievance committee finally voted on Dagdag's dismissal, per minutes of the meeting.[22] Said committee made a conclusion that Dagdag committed gross immorality in violation of the school rules and the Code of Ethics for Professional Teachers.[23]

To determine whether a conduct is disgraceful or immoral, a consideration of the totality of the circumstances surrounding the conduct; and an assessment of the said circumstances vis-a-vis the prevailing norms of conduct, i.e., what the society generally considers moral and respectable, are necessary.[24]

In the case of *Capin-Cadiz v. Brent Hospital and Colleges, Inc.*[25] it is held that:

Jurisprudence has already set the standard of morality with which an act should be gauged — it is public and

secular, not religious. Whether a conduct is considered disgraceful or immoral should be made in accordance with the prevailing norms of conduct, which, as stated in *Leus*, refer to those conducts which are proscribed because they are detrimental to conditions upon which depend the existence and progress of human society. The fact that a particular act does not conform to the traditional moral views of a certain sectarian institution is not sufficient reason to qualify such act as immoral unless it, likewise, does not conform to public and secular standards. More importantly, there must be substantial evidence to establish that premarital sexual relations and pregnancy out of wedlock is considered disgraceful or immoral.[26] (Citations and emphasis in the original omitted)

The totality of evidence in this case does not justify the dismissal of Dagdag from her employment considering that there was no legal impediment to marry between Dagdag and the father of her child at the time of the conception. To reiterate the ruling of this Court in *Leus* and *Capin-Cadiz*, pregnancy of a school teacher out of wedlock is not a just cause for termination of an employment absent any showing that the pre-marital sexual relations and, consequently, pregnancy out of wedlock, are indeed considered disgraceful or immoral.

WHEREFORE, premises considered, the petition is DENIED. Accordingly, the Decision dated November 10, 2016 and the Resolution dated May 17, 2017 of the Court of Appeals in CA-G.R. SP No. 133482 are AFFIRMED in toto.

SO ORDERED.

Bersamin[*] (Acting Chairperson), Del Castillo, and Gesmundo,**] JJ., concur.
Jardeleza, J., see concurring opinion.

[*] Designated Acting Chairperson per Special Order No. 2606 dated October 10, 2018.

[**] Designated Additional Member per Special Order No. 2607 dated October 10, 2018.

[1] Rollo, pp. 3-16.

[2] Penned by Associate Justice Myra V. Garcia-Fernandez, concurred in by Associate Justices Mario V. Lopez and Elihu A. Ibañez; *id.* at 17-41.

[3] *Id.* at 54-55.

[4] *Id.* at 18-19.

[5] *Id.* at 19.

[6] *Id.* at 19-20.

[7] *Id.* at 20.

[8] *Id.*

[9] *Id.* at 20-21.

[10] *Id.* at 22.

[11] Rendered by Executive Labor Arbiter Vito C. Bose; *id.* at 59-65.

[12] *Id.* at 65.

[13] Penned by Commissioner Teresita D. Castillon-Lora, concurred in by Presiding Commissioner Raul T.

Aquino and Commissioner Erlinda T. Agus; id. at 67-86.

[14] Id. at 85-86.

[15] Id. at 17-41.

[16] Art. 135. Discrimination prohibited. - It shall be unlawful for any employer to discriminate against any woman employee with respect to terms and conditions of employment solely on account of her sex.

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[17] Id. at 40-41.

[18] Id. at 42-53.

[19] Id. at 54-55.

[20] Mcmer Corporation, Inc., et al. v. NLRC, et al., 735 Phil. 204, 213 (2014).

[21] Doble, Jr. v. ABB, Inc., G.R. No. 215627, June 5, 2017, 825 SCRA 557, 579, citing Gan v. Galderama Philippines, Inc., et al., 701 Phil. 612, 639 (2013).

[22] Rollo, p. 35.

[23] Id. at 63.

[24] Leus v. St. Scholastica's College Westgrove, et al., 752 Phil. 186, 207 (2015).

[25] 781 Phil. 610 (2016).

[26] Id. at 625-626.

CONCURRING OPINION

JARDELEZA, J.:

An unmarried woman has a liberty interest under the due process clause to engage in consensual sexual relations with an unmarried man and bear a child with him as a result of said relations. I submit this Opinion to show that (I) considering jurisprudential precedents and Filipino tradition, it is high time this Court recognize this liberty interest as a fundamental right entitled to State protection. Thus, pregnancy of an employee out of wedlock cannot constitute just cause for termination from employment absent any showing that the pregnancy was contracted under grossly immoral circumstances; and (II) a contrary ruling would violate the constitutional guarantee of equal protection of the law and result in an unwarranted difference in treatment of men and women under like circumstances.

I

Our Constitution guarantees that no person shall be deprived of liberty without due process of law. Liberty, in turn, has been generally defined by this Court as the freedom to do those things which are ordinarily done by free men.^[1] Traditionally, the exercise of liberty interests is protected from arbitrary government interference. Where the government is able to show a rational relation between its action and a legitimate governmental interest, judicial attitude toward the challenged state action is deferential and government intrusions into liberty interests

are generally upheld.[2] This deference, however, stops when the governmental act infringes on a fundamental right. In such cases, the Court requires "a stricter and more exacting adherence to constitutional limitations. Rational basis should not suffice." [3]

A

An unmarried woman has a liberty interest to engage in consensual sexual relations with an unmarried man and bear a child with him as a result of said relations. I submit that it is high time that the Court recognize this liberty interest as "fundamental," as to require a higher burden of proof to justify its intrusion.[4]

In this jurisdiction, fundamental rights have been deemed to include only those basic liberties explicitly or implicitly guaranteed by the Bill of Rights of the Constitution.[5] Admittedly, there is nothing in our Bill of Rights which explicitly guarantees a right in favor of an unmarried woman to engage in consensual sexual relations with an unmarried man, and thereafter bear a child with him. Precedential decisions of this Court, however, support the recognition of the fundamental nature of this liberty interest.

A general right to personal privacy is recognized in the United States, with its Supreme Court declaring that liberties extend to "certain personal choices central to individual dignity and autonomy x x x"[6] The right to privacy was first expressly recognized in the 1965 case of *Griswold v. Connecticut*,[7] where the US Supreme Court upheld a privacy right to use contraceptives in favor of married couples. (Later on, a similar right in favor of unmarried individuals would be recognized in the case of *Eisenstadt v. Baird*.[8])

In this jurisdiction, the constitutional right to personal privacy was first explicitly acknowledged in 1968[9] when the Court, in *Morfe v. Mutuc*,[10] adopted the ruling in *Griswold*, declaring thus:

x x x The due process question touching on an alleged deprivation of liberty as thus resolved goes a long way in disposing of the objections raised by plaintiff that the provision on the periodical submission of a sworn statement of assets and liabilities is violative of the constitutional right to privacy. There is much to be said for this view of Justice Douglas: "Liberty in the constitutional sense must mean more than freedom from unlawful governmental restraint; it must include privacy as well, if it is to be a repository of freedom. The right to be let alone is indeed the beginning of all freedom." As a matter of fact, this right to be let alone is, to quote from Mr. Justice Brandeis "the most comprehensive of rights and the right most valued by civilized men."

The concept of liberty would be emasculated if it does not likewise compel respect for his personality as a unique individual whose claim to privacy and interference demands respect. x x x

x x x x

The *Griswold* case invalidated a Connecticut statute which made the use of contraceptives a criminal offense on the ground of its amounting to an unconstitutional invasion of the right of privacy of married persons; rightfully it stressed "a relationship lying within the zone of privacy created by several fundamental constitutional guarantees." It has wider implications though. The constitutional right to privacy has come into its own.

So it is likewise in our jurisdiction. The right to privacy as such is accorded recognition independently of its identification with liberty; in itself, it is fully deserving of constitutional protection. x x x[11] (Emphasis supplied; citations omitted.)

On the other hand, in *Leus v. St. Scholastica 's College Westgrove*,[12] this Court has held that the fact that an unmarried female employee gives birth out of wedlock does not give cause for administrative sanction for disgraceful and immoral conduct under the 1992 Manual of Regulations for Private Schools (1992 MRPS) if the father of her child is himself unmarried.[13] The Court said:

x x x It may be a not-so-ideal situation and may cause complications for both mother and child but it does not give cause for administrative sanction. There is no law which penalizes an unmarried mother under those circumstances by reason of her sexual conduct or proscribes the consensual sexual activity between two unmarried persons. Neither does the situation contravene any fundamental state policy as expressed in the Constitution, a document that accommodates various belief systems irrespective of dogmatic origins.[14] (Emphasis omitted.)

This ruling was subsequently affirmed in *Capin-Cadiz v. Brent Hospital and Colleges, Inc.*,[15] which involved a suit questioning Brent Hospital's act of putting an unwed, pregnant employee on suspension until she marries her child's father in accordance with law. In ruling in favor of the female employee, the Court in Cadiz recognized a woman's inherent, intangible and inalienable right to choose her status, that is, to choose freely a spouse and to enter into marriage only with her free and full consent.[16] In my Concurring Opinion in Cadiz, I first ventured that this freedom to choose also includes the freedom to decide whether she will bear and rear her child without the benefit of marriage.[17]

More recently, the fundamental right to marry was again recognized in *Republic v. Manalo*,[18] where this Court upheld a liberty interest on the part of a Filipino spouse to be re-capacitated to marry, in cases where a valid foreign divorce has been obtained.

I submit that the foregoing jurisprudential holdings recognizing fundamental rights to marriage and privacy can and should extend to include a right on the part of an unmarried woman to engage in consensual sexual relations with an unmarried man and bear a child with him as a result. As I explained in my Concurring Opinion in Cadiz:

x x x [T]he rights to personal liberty and privacy are embodied in the Due Process Clause and expounded by jurisprudence. These rights pertain to the freedom to make personal choices that define a human being's life and personhood. The decision to marry and to whom are two of the most important choices that a woman can make in her life. In the words of the US Supreme Court in *Obergefell* "[n]o union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were." The State has no business interfering with this choice. Neither can it sanction any undue burden of the right to make these choices. Brent, in conditioning Christine Joy's reinstatement on her marriage, has effectively burdened her freedom. She was forced to choose to lose her job or marry in order to keep it. By invoking the MRPS and the Labor Code, Brent is, in effect, saying that this kind of compelled choice is sanctioned by the State. Contrary to this position, the State cannot countenance placing a woman employee in a situation where she will have to give up one right (the right to marry as a component of personal liberty and privacy) for another (the right to employment). This is not the kind of State that we are in. Nor is it the kind of values that our Constitution stands for.

X X X X

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

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

In other jurisdictions, there is a growing clamor for laws to be readjusted to suit the needs of a rising class of women—single mothers by choice. These countries are faced with the same predicament that Brent confronted

in this case — their rules have lagged behind the demands of the times. Nevertheless, in our jurisdiction, the Constitution remains as the guide to ascertain how new situations are to be dealt with. In Christine Joy's case, the Constitution tells us that her right to personal liberty and privacy protects her choice as to whether she will raise her child in a marriage. Brent, in dismissing Christine Joy because of her pregnancy outside of wedlock, unduly burdened her right to choose. Again, the MRPS and the Labor Code cannot be used to justify Brent's acts. These government issuances respect the Constitution and abide by it. Any contrary interpretation cannot be countenanced.

In my proposed reading of the constitutional right to personal liberty and privacy, Christine Joy and other women similarly situated are free to be single mothers by choice. This cannot be curtailed in the workplace through discriminatory policies against pregnancy out of wedlock. The Constitution allows women in this country to design the course of their own lives. They are free to chart their own destinies.[19] (Emphasis supplied; citations omitted.)

B

Existing facts and contemporary Filipino traditions also support the recognition of such a fundamental right in favor of an unmarried woman to bear and carry her child to term.

Premarital sexual relations, and pregnancies resulting from such relations, while not trumpeted, are increasingly tolerated, if not commonplace, in Philippine society. Data from the Philippine Statistics Authority (PSA), for example, would show that almost half (851,088 or 49.2%) of the total registered live births in 2016[20] and more than half (907,061 or 53.3%) in 2017[21] were born out of wedlock. Scholarly literature appears to affirm a higher incidence of unconventional family structures, including those headed by unmarried mothers.[22] Thus, and unlike before, where unwed, pregnant women were shunned by society, more recent experience seem to show a growing acceptance of women in such situations, with friends and families banding together to support them.[23]

Congress has also enacted legislation in support of this tradition. The Labor Code, for example, does not distinguish between married and unmarried female employees for purposes of availing of maternity leave privileges. Maternity leave benefits are extended to a pregnant female employee, irrespective of marital status.[24] Under Republic Act (R. A.) No. 8972,[25] solo parents entitled to government support include women who give birth to (and rear) a child as a result of rape and other crimes of chastity[26] and unmarried women who preferred to keep and rear their child/children instead of having others care for them or giving them up to a welfare institution.[27] Under Section 13 of R. A. No. 9710,[28] women faculty and students cannot be expelled or refused re-admission solely on account of having contracted pregnancy outside of marriage during their term in school.

Admittedly, there is still some stigma attached to being an unwed mother in the Philippines.[29] Despite this, however, abortion is not encouraged and is illegal under any circumstance.[30] The Constitution, for one, declares it a state policy to equally protect the life of the mother and the life of the unborn from conception.[31] Abortion is criminalized under the Revised Penal Code; only safe, legal and non-abortifacient family planning products and services are allowed to be legally sold and used.[32] Relatedly, heavy penalties are imposed by the law on any person who commits or participates in acts of abortion.[33]

Thus, while the "conventional" view may still be that sex and pregnancy should be kept within the confines of marriage, this should not restrict an unmarried woman's exercise of her liberty to decide whether to adhere to this "convention" or not. I submit that this freedom to so decide, one so integral to, and determinative of, a person's life course, is fundamental in nature; any act which purports to restrict its exercise should be subject to the

strictest of scrutiny.

II

This Court, in a number of cases, has deemed the acts of unmarried male respondents engaging in pre-marital sexual relations (and even siring children) with an unmarried woman insufficient to warrant removing from the male respondent his means to earn a living. I submit that the guarantee of equal protection of the law compels us to apply the same treatment to unmarried female employees who decide to enter into pre-marital, consensual sexual relations with a man, likewise unmarried, and bear a child as a result of these relations.

Section 1, Article III of the Constitution provides:

Sec. 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws. (Emphasis supplied.)

The guarantee of equal protection requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed.[34] Its purpose is to secure every person against intentional and arbitrary discrimination, and forbids the drawing of distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective.[35] In other words, similar subjects should not be treated differently as to give undue favor to some and unjustly discriminate against others.[36]

Our jurisprudence is replete with cases dismissing disbarment cases filed against unmarried male lawyers for commission of allegedly immoral conduct with unmarried female partners:

In *Soberano v. Villanueva*,[37] this Court held that "[i]ntimacy between a man and a woman who are not married x x x is neither so corrupt as to constitute a criminal act [nor] so unprincipled as to warrant disbarment or disciplinary action against the man as a member of the Bar." [38]

In *Reyes v. Wong*,[39] we held that while "[u]ndoubtedly, the cohabitation of respondent with petitioner is immoral for lack of a valid marriage. But to be the basis of a disciplinary action, the act must not merely be immoral; it must be 'grossly immoral' — 'it must be so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree.'" [40]

In *Radaza v. Tejano*,[41] while the Court found that respondent's conduct does not "[conform] with the highest standard of morality and propriety or decorum that every lawyer is expected to maintain," it nevertheless held that the same "does not warrant drastic disciplinary action." [42]

In *Figuroa v. Barranco, Jr.*,[43] the Court found that respondent's acts of bearing an illegitimate child and reneging on his promise to marry petitioner did not "constitute gross immorality warranting [his] permanent exclusion x x x from the legal profession." [44]

In all the foregoing cases, the Court refused to disbar the unmarried male respondent for engaging in pre-marital sexual relations with an unmarried woman, "even if as a result of such relationship, a child was born out of wedlock." [45] Indeed, while the equal protection clause does not require the universal application of the laws without distinction,[46] classification can only be permitted when the same is "based on a reasonable foundation or rational basis and is not palpably arbitrary." [47] Here, I find no reasonable foundation or rational basis (and none appears to have been shown on the record) for a distinction between unmarried male and female workers as to warrant differential treatment for their commission of what are essentially the same act/s.

Thus, upholding respondent's termination from employment on account of her engaging in premarital sexual relations with her unmarried partner, and having a baby as a consequence, constitutes discrimination insofar as the

same grounds have been held insufficient to warrant removal from a male respondent (under like circumstances) of his means of livelihood.

III

In sum, I submit that the rights to personal liberty and privacy encompass an unmarried woman's choice to enter into consensual intimate relations with an unmarried man and have a child with him. This right, while unenumerated, is fundamental; any act which operates to deprive a woman of this right should thus be subject to strict scrutiny. Petitioner has failed to hurdle this test. In dismissing respondent solely because of her pregnancy outside of wedlock, petitioner burdened a fundamental right without proffering any sufficient justification. Furthermore, since male employees under like circumstances are not held to the same standards, this Court cannot uphold respondent's termination from employment without violating the constitutional guarantee to equal protection of laws.

Accordingly, I vote to DISMISS the petition.

[1] *Rubi v. The Provincial Board of Mindoro*, 39 Phil. 660, 705 (1919).

[2] *British American Tobacco v. Camacho*, G.R. No. 163583, April 15, 2009, 585 SCRA 36, 40-44.

[3] *Central Bank Employees Association v. Bangko Sentral ng Pilipinas*, G.R. No. 148208, December 15, 2004, 446 SCRA 299, 387. *Italics omitted*.

[4] *Id.*

[5] *Republic v. Manalo*, G.R. No. 221029, April 24, 2018, citing *J. Carpio-Morales, Dissenting Opinion in Central Bank Employees Association v. Bangko Sentral ng Pilipinas*, *supra* note 3, also as cited by *J. Brion, Separate Opinion in Biraogo v. Philippine Truth Commission of 2010*, G.R. No. 192935, December 7, 2010, 637 SCRA 78.

[6] *Obergefell v. Hodges*, 576 U.S. ____ (2015), citing *Griswold v. Connecticut*, 381 U.S. 479 (1965); and *Eisenstadt v. Baird*, 405 U.S. 438 (1972). See discussion in *Roe v. Wade*, 410 U.S. 113 (1973). See also liberty and privacy discussion in *J. Jardeleza, Concurring Opinion in Capin-Cadiz v. Brent Hospital*, G.R. No. 187417, February 24, 2016, 785 SCRA 18, 45-50.

[7] 381 U.S. 479, 485-486 (1965) In striking down a Connecticut statute forbidding the use of contraceptives, the *Griswold* Court held:

The present case, then, concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees. And it concerns a law which, in forbidding the use of contraceptives, rather than regulating their manufacture or sale, seeks to achieve its goals by means having a maximum destructive impact upon that relationship. Such a law cannot stand in light of the familiar principle, so often applied by this Court, that a "governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." x x x Would we allow the police to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives? The very idea is repulsive to the notions of privacy surrounding the marriage relationship. (Citation omitted.)

[8] 405 U.S. 438, 453-454 (1972). The Court, applying equal protection, held:

x x x [W]hatever the rights of the individual to access to contraceptives may be, the rights must be the same for the unmarried and the married alike.

If, under *Griswold*, the distribution of contraceptives to married persons cannot be prohibited, a ban on distribution to unmarried persons would be equally impermissible. It is true that in *Griswold* the right of privacy in question inhered in the marital relationship. Yet the marital couple is not an independent entity with a mind and heart of its own, but an association of two individuals each with a separate intellectual and emotional makeup. If the right of privacy means anything, it is the right of the individual, married or single to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child. x x x

On the other hand, if *Griswold* is no bar to a prohibition on the distribution of contraceptives, the State could not, consistently with the Equal Protection Clause, outlaw distribution to unmarried, but not to married, persons. In each case, the evil, as perceived by the State, would be identical, and the under inclusion would be invidious. xxx (Citations omitted.)

See also *Roe v. Wade*, 410 U.S. 113 (1973), where the Court held that the constitutional right to privacy also encompasses a woman's choice whether to terminate her pregnancy within the first trimester and *Planned Parenthood of Southern Pa. v. Casey*, 505 U.S. 833 (1992), which affirmed the essential ruling in *Roe*.

[9] See generally Tan, "The Complete Philippine Right to Privacy," *Philippine Law Journal*, Vol. 82, 2008, pp. 79-90.

[10] G.R. No. L-20387, January 31, 1968, 22 SCRA 424.

[11] *Id.* at 442-444. The Court nevertheless upheld the validity of the challenged law requiring the periodic submission of sworn statements of financial conditions, assets and liabilities of an official or employee of the government, thus:

x x x [I]t cannot be said that the challenged statutory provision calls for disclosure of information which infringes on the right of a person to privacy. It cannot be denied that the rational relationship such a requirement possesses with the objective of a valid statute goes very far in precluding assent to an objection of such character. This is not to say that a public officer, by virtue of a position he holds, is bereft of constitutional protection; it is only to emphasize that in subjecting him to such a further compulsory revelation of his assets and liabilities, including the statement of the amounts and sources of income, the amounts of personal and family expenses, and the amount of income taxes paid for the next preceding calendar year, there is no unconstitutional intrusion into what otherwise would be a private sphere. (Emphasis supplied.) (*Id.* at 445-446.)

[12] G.R. 187226, January 28, 2015, 748 SCRA 378.

[13] Memorandum Circular No. 15, Series of 2010, issued by the Civil Service Commission, has a similar provision to cover government employees. The relevant portion of the Circular provides that "[U]nmarried government employees who do not have existing legal impediments to contract marriage may not be liable for the administrative offense of Disgraceful and Immoral Conduct unless the conduct consists of immoral and deviant acts of which are inherently forbidden by the basic norms of decency, morality and decorum such as, but not limited to incest, pedophilia, exhibitionism and the like."

[14] *Leus v. St. Scholastica's College Westgrove*, supra note 12 at 402-403.

[15] G.R. No. 187417, February 24, 2016, 785 SCRA 18.

[16] *Id.* at 37.

[17] *Id.* at 50; J. Jardeleza Concurring Opinion.

[18] G.R. No. 221029, April 24, 2018.

- [19] Capin-Cadiz v. Brent Hospital and Colleges, Inc., (J. Jardeleza Concurring Opinion), supra note 15 at 51-53.
- [20] See <https://psa.gov.ph/content/births-philippines-2016>.
- [21] See <https://psa.gov.ph/content/births-philippines-2017>.
- [22] Tarroja, "Revisiting the Definition and Concept of Filipino Family: A Psychological Perspective" Philippine Journal of Psychology, 2010, 43(2), pp. 177-193. See also Pasion, "Modern Filipino Families: How does the state protect them?" taken from <https://www.rappler.com/newsbreak/in-depth/183683-modern-filipino-families-state-protection-welfare>, last accessed on January 7, 2019.
- [23] Velete, "In Defense of Single Moms, By Single Moms," Philippine Daily Inquirer, May 22, 2017, taken from <https://www.pressreader.com/philippines/philippine-daily-inquirer/20170512/282720521883082> last accessed January 7, 2019.
- [24] LABOR CODE, Art. 131. Maternity leave benefits. – (a) Every employer shall grant to any pregnant woman employee who has rendered an aggregate service of at least six (6) months for the last twelve (12) months, maternity leave of at least two (2) weeks prior to the expected date of delivery and another four (4) weeks after normal delivery or abortion with full pay based on her regular or average weekly wages. The employer may require from any woman employee applying for maternity leave the production of a medical certificate stating that delivery will probably take place within two weeks.
- (b) The maternity leave shall be extended without pay on account of illness medically certified to arise out of the pregnancy, delivery, abortion or miscarriage, which renders the woman unfit for work, unless she has earned unused leave credits from which such extended leave may be charged.
- (c) The maternity leave provided in this Article shall be paid by the employer only for the first four (4) deliveries by a woman employee after the effectivity of this Code.
- [25] Otherwise known as the "Solo Parents' Welfare Act of 2000."
- [26] R.A. No. 8972, Sec. 3(a)(1).
- [27] R.A. No. 8972, Sec. 3(a)(8).
- [28] Otherwise known as "The Magna Carta of Women."
- [29] See <https://philippineone.com/the-stigma-of-being-a-single-parent-in-the-philippines/> last accessed on January 7, 2019. See also <http://cnnphilippines.com/life/culture/2018/03/27/single-mothers-Philippines.html> (last accessed on January 7, 2019) and <https://www.rappler.com/nation/169657-single-mothers-faces-struggles> (last accessed on January 7, 2019).
- [30] Finer and Hussain, "Unintended Pregnancy and Unsafe Abortion in the Philippines: Context and Consequences" taken from <https://www.guttmacher.org/report/unintended-pregnancy-and-unsafe-abortion-philippines-context-and-consequences> (last accessed January 7, 2019).
- [31] CONSTITUTION, Art. II, Sec. 12.
- [32] See R.A. No. 10354, otherwise known as the "Reproductive Health and Responsible Parenthood Act."
- [33] See Articles 256-259 of the Revised Penal Code.
- [34] Biraogo v. Philippine Truth Commission of 2010, G.R. No. 192935, December 7, 2010, 637 SCRA 78, 167.

[35] *Id.*

[36] *Philippine Judges Association v. Prado*, G.R. No. 105371, November 11, 1993, 227 SCRA 703, 712.

[37] A.C. No. 215, December 29, 1962, 6 SCRA 891.

[38] *Id.* at 895. Italics supplied.

[39] A.C. No. 547, January 29, 1975, 63 SCRA 667.

[40] *Id.* at 673. Citations omitted; italics supplied.

[41] A.C. No. 1377, July 31, 1981, 106 SCRA 246.

[42] *Id.* at 251.

[43] S.B.C. Case No. 519, July 31, 1997, 276 SCRA 445.

[44] *Id.* at 449.

[45] *Id.* Citation omitted.

[46] *Philippine Judges Association v. Prado*, *supra* note 36 at 712.

[47] *Biraogo v. Philippine Truth Commission of 2010*, *supra* note 34 at 170.

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