

LOIDA Q. SHAUF AND JACOB SHAUF, PETITIONERS, VS. HON. COURT OF APPEALS, DON E. DETWILER AND ANTHONY PERSI, RESPONDENTS.

G.R. No. 90314. November 27, 1990

Ponente: REGALADO, J.

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REGALADO, J.:

In this petition for review on certiorari, petitioners would have us reverse and set aside the decision rendered by respondent Court of Appeals on August 22, 1989, in CA-G.R. CV No. 17932, entitled "Loida Shauf and Jacob Shauf, Plaintiffs-Appellants, versus Don Detwiler and Anthony Persi, Defendants-Appellants,"[1] dismissing petitioners' complaint for damages filed before the Regional Trial Court, Branch LVI, Angeles City, in Civil Case No. 2783 thereof, and its subsequent resolution denying petitioners' motion for the reconsideration of its aforesaid decision.

As found by respondent court,[2] Clark Air Base is one of the bases established and maintained by the United States by authority of the agreement between the Philippines and the United States concerning military bases which entered into force on March 26, 1947.

The Third Combat Support Group, a unit of Clark Air Base, maintains a Central Civilian Personnel Office (CCPO) charged with the responsibility for civilian personnel management and administration. It is through its civilian personnel officer that the base commander is responsible for direction and administration of civilian personnel program, including advising management and operating officials on civilian personnel matters. Acting for the commander, the civilian personnel officer is the administrative official in charge of the activities of the CCPO, and the commander relies on him to carry out all aspects of the civilian personnel program. The CCPO personnel program encompasses placement and staffing, position management and classification.

The Third Combat Support Group also maintains an Education Branch, Personnel Division, which provides an education program for military personnel, U.S. civilian employees, and adult dependents, assigned or attached to Clark Air Base. Its head, the education director, is responsible directly to the base director of personnel for administering the education services program for Clark Air Base. In this capacity, and within broad agency policies, is delegated to him the full responsibility and authority for the technical, administrative and management functions of the program. As part of his duties, the education director provides complete academic and vocational guidance for military dependents, including counseling, testing and test interpretation. During the time material to the complaint, private respondent Don Detwiler was civilian personnel officer, while private respondent Anthony Persi was education director.[3]

Petitioner Loida Q. Shauf, a Filipino by origin and married to an American who is a member of the United States Air Force, applied for the vacant position of Guidance Counselor, GS 1710-9, in the Base Education Office at Clark Air Base, for which she is eminently qualified. As found by the trial court, she received a Master of Arts degree from the University of Sto. Tomas, Manila, in 1971 and has completed 34 semester hours in

psychology-guidance and 25 quarter hours in human behavioral science; she has also completed all course work in human behavior and counseling psychology for a doctoral degree; she is a civil service eligible; and, more importantly, she had functioned as a Guidance Counselor at the Clark Air Base at the GS 1710-9 level for approximately four years at the time she applied for the same position in 1976.[4]

By reason of her non-selection to the position, petitioner Loida Q. Shauf filed an equal employment opportunity complaint against private respondents, for alleged discrimination against the former by reason of her nationality and sex. The controversy was investigated by one Rudolph Duncan, an appeals and grievance examiner assigned to the Office of Civilian Personnel Operations, Appellate Division, San Antonio, Texas, U.S.A and what follows are taken from his findings embodied in a report duly submitted by him to the Equal Opportunity Officer on February 22, 1977.[5]

On or about October 1976, the position of Guidance Counselor, GS 1710-9, became vacant in the Base Education Office, Clark Air Base. A Standard Form 52 was submitted to the Civilian Personnel Office to fill said position. The Civilian Personnel Division took immediate steps to fill the position by advertisement in the Clark Air Base Daily Bulletin #205 dated October 21, 1976. As a result of the advertisement, one application was received by the Civilian Personnel Office and two applications were retrieved from the applicants supply file in the Civilian Personnel Office. These applications were that of Mrs. Jean Hollenshead, an employee of the DOD Schools at Clark Air Base, Mrs. Lydia B. Gaillard, an unemployed dependent, and Mrs. Loida Q. Shauf. All three applications were reviewed and their experiences were considered qualifying for the advertised position.

On November 11, 1976, the application of Loida Q. Shauf was referred to Mr. Anthony Persi, with the applications of Mrs. Jean Hollenshead and Mrs. Lydia Gaillard, to be considered for the position of Guidance Counsellor, GS 1710-9. Mr. Persi, after review of the applications, stated that upon screening the applications he concluded that two applicants had what he considered minimum qualifications for the position. The two applicants were Mrs. Hollenshead and Mrs. Gaillard. In the case of Loida Q. Shauf, Mr. Persi felt that her application was quite complete except for a reply to an inquiry form attached to the application. This inquiry form stated that the National Personnel Records Center, St. Louis, Missouri, was unable to find an official personnel folder for Loida Q. Shauf. Mr. Persi said that as a result of the National Personnel Records Center, GSA, not being able to find any records on Loida Q. Shauf, this raised some questions in his mind as to the validity of her work experience. As a result of his reservations on Loida Q. Shauf's work experiences and his conclusions that the two other applications listed minimum qualifications, Mr. Persi decided to solicit additional names for consideration.

Subsequently in his correspondence dated November 12, 1976, Mr. Persi returned the three applications to the Civilian Personnel Office without a selection decision. Mr. Persi also requested in his correspondence that the Civilian Personnel Office initiate immediate inquiry to the Central Oversea Rotation and Recruiting Office (CORRO) for the submission of a list of highly qualified candidates. He further stated in his correspondence that the three applicants who had indicated an interest would be considered with the CORRO input for selection.

As a result of Mr. Persi's request, an AF Form 1188 "Oversee Civilian Personnel Request" was submitted to CORRO on November 12, 1976. This request in fact asked for one Guidance Counsellor, GS 1710-9. The form also listed the fact that local candidates are available. However, instead of getting a list of candidates for consideration, Mr. Persi was informed by CORRO, through the Civilian Personnel Office in their December 15, 1976 message that a Mr. Edward B. Isakson from Loring AFB, Maine, was selected for the position. Mr. Persi stated, when informed of CORRO's selection, that he had heard of Mr. Isakson and, from what he had heard, Mr. Isakson was highly qualified for the position; therefore, he wished to have the selection stand. This statement was denied by Mr. Persi, Mr. Isakson was placed on the rolls at Clark Air Base on January 24, 1977.[6]

Said examiner, however, also stated in his findings that, by reason of petitioner Loida Q. Shauf's credentials which he recited therein, she is and was at the time of the vacancy,[7] highly qualified for the position of Guidance Counselor, GS 1710-9. In connection with said complaint, a Notice of Proposed Disposition of Discrimination Complaint, dated May 16, 1977,[8] was served upon petitioner Loida Q. Shauf stating that because the individual selected did not meet the criteria of the qualification requirements, it was recommended "that an overhire GS 1710-9 Assistant Education Advisor position be established for a 180 day period. x x x. The position should be advertised for local procurement on a best qualified basis with the stipulation that if a vacancy occurs in a permanent GS 1710-9 position the selectee would automatically be selected to fill the vacancy. If a position is not vacated in the 180 day period the temporary overhire would be released but would be selected to fill a future vacancy if the selectee is available."

During that time, private respondents already knew that a permanent GS 1710-9 position would shortly be vacant, that is, the position of Mrs. Mary Abalateo whose appointment was to expire on August 6, 1977 and this was exactly what private respondent Detwiler had in mind when he denied on June 27, 1977 Mrs. Abalateo's request for extension of March 31, 1977. However, private respondents deny that Col. Charles J. Corey represented to petitioner Loida Q. Shauf that she would be appointed to the overhire position and to a permanent GS 1710-9 position as soon as it became vacant, which allegedly prompted the latter to accept the proposed disposition.

Contrary to her expectations, petitioner Loida Q. Shauf was never appointed to the position occupied by Mrs. Abalateo whose appointment was extended indefinitely by private respondent Detwiler.[9]

Feeling aggrieved by what she considered a shabby treatment accorded her, petitioner Loida Q. Shauf wrote the U.S. Civil Service Commission questioning the qualifications of Edward Isakson. Thereafter, said commission sent a communication addressed to private respondent Detwiler,[10] finding Edward Isakson not qualified to the position of Guidance Counselor, GS 1710-9, and requesting that action be taken to remove him from the position and that efforts be made to place him in a position for which he qualifies. Petitioner Loida Q. Shauf avers that said recommendation was ignored by private respondent Detwiler and that Isakson continued to occupy said position of guidance counselor.

Petitioner Loida Q. Shauf likewise wrote the Base Commander of Clark Air Base requesting a hearing on her complaint for discrimination. Consequently, a hearing was held on March 29, 1978 before the U.S. Department of Air Force in Clark Air Base.[11]

Before the Department of Air Force could render a decision, petitioner Loida Q. Shauf filed a complaint for damages, dated April 27, 1978, against private respondents Don Detwiler and Anthony Persi before the Regional Trial Court, Branch LVI at Angeles City, docketed as Civil Case No. 2783, for the alleged discriminatory acts of herein private respondents in maliciously denying her application for the GS 1710-9 position.

Private respondents, as defendants in Civil Case No. 2783, filed a motion to dismiss on the ground that as officers of the United States Armed Forces performing official functions in accordance with the powers vested in them under the Philippine-American Military Bases Agreement, they are immune from suit. The motion to dismiss was denied by the trial court. A motion for reconsideration was likewise denied.

Consequently, private respondents filed an Answer reiterating the issue of jurisdiction and alleging, inter alia, that defendant Persi's request to Central Oversea Rotation and Recruiting Office (CORRO) was not for appointment of a person to the position of Guidance Counselor, GS 1710-9, but for referrals whom defendant Persi would consider together with local candidates for the position; that the extension of the employment of Mrs. Abalateo was in accordance with applicable regulation and was not related to plaintiff Loida Q. Shauf's discrimination complaint; that the decision was a joint decision of management and CCPO reached at a meeting on June 29, 1977

and based on a letter of the deputy director of civilian personnel, Headquarters Pacific Air Forces, dated June 15, 1977; and that the ruling was made known to and amplified by the director and the deputy director of civilian personnel in letters to petitioner Loida Q. Shauf dated August 30, 1977 and September 19, 1977.

The parties submitted a Partial Stipulation of Facts in the court a quo providing, in part, as follows:

- a) In October 1976, the position of guidance counselor, GS-1710-9, at Clark Air Base was vacant;
- b) Plaintiff Loida Q. Shauf, a qualified dependent locally available, was among those who applied for said vacant position of guidance counselor, GS-1710-9;
- c) Plaintiff Loida Q. Shauf at the time she filed her aforesaid application was qualified for the position of guidance counselor, GS-1710-9;
- d) Civilian Personnel Office accomplished and forwarded to CORRO an AF Form 1188 covering the position of guidance counselor, GS-1710-9, applied for by plaintiff Loida Q. Shauf;
- e) U.S. Department of Defense Instructions (DODI) No. 1400.23 under Policy and Procedures provides that -
"Where qualified dependents of military or civilian personnel of the Department of Defense are locally available for appointment to positions in foreign areas which are designated for U.S. citizen occupancy and for which recruitment outside the current work force is appropriate, appointment to the position will be limited to such dependents unless precluded by treaties or other agreements which provide for preferential treatment for local nationals."

and Air Force Regulation 40-301 dated 12 May 1976 in par. 2 c(1) thereof provides that -

"c. Selection or Referral of Eligible Applicants From the 50 States:

(1) CORRO makes selection, except as provided in (3) below, for oversea positions at Grades GS-11 and below (and wage grade equivalents) for which it has received an AF Form 1188, and for higher grade positions if requested by the oversee activity." [12]

Likewise, a Supplement to Partial Stipulation of Facts was filed by the parties on October 6, 1978, which reads:

- 1. Under date of 30 September 1978, plaintiff Loida Q. Shauf through her counsel, Quasha Asperilla Ancheta Valmonte Peña & Marcos, lodged an appeal before the Civil Service Commission, Appeals Review Board, from the decision of the Secretary of the Air Force dated 1 September 1978 affirming the EEO Complaints Examiner's Findings and Recommended Decision in the Discrimination Complaint of Mrs. Loida Q. Shauf, No. SF 071380181 dated 3 July 1978, x x x;
- 2. The aforesaid appeal has not been decided up to now by the Civil Service Commission, Appeals Review Board; and
- 3. Plaintiff Loida Q. Shauf has not instituted any action before any federal district court of the United States impugning the validity of the decision of the Secretary of the Air Force dated 1 September 1978 affirming the EEO Complaints Examiner's Findings and Recommended Decision in the Discrimination Complaint of Mrs. Loida Q. Shauf, No. SF 071380181 dated 3 July 1978. [13]

Thereafter, on March 8, 1988, the trial court rendered judgment in favor of herein petitioner Loida Q. Shauf, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered ordering the defendants jointly and severally to pay the plaintiffs:

- 1) The amount of \$39,662.49 as actual damages or its equivalent in Philippine pesos in October 1976 as reported by the Central Bank of the Philippines or any authorized agency of the Government:

- 2) The amount of P100,000.00 as moral and exemplary damages;
- 3) Twenty (20%) percent of \$39,662.49 or its equivalent in Philippine Pesos in October 1976 as reported by the Central Bank of the Philippines or any authorized agency of the Government, as attorney's fees, and;
- 4) Cost(s) of suit.

SO ORDERED.[14]

Both parties appealed from the aforecited decision to respondent Court of Appeals.

In their appeal, plaintiffs-appellants (herein petitioners) raised the following assignment of errors:

1. Lower court gravely erred in holding that the actual and exemplary damages and attorney's fees may be paid in Philippine Pesos based on the exchange rate prevailing during October 1976 as determined by the Central Bank;
2. Lower court gravely erred in limiting the amount of moral and exemplary damages recoverable by plaintiff to P100,000.00.[15]

On the other hand, defendants-appellants (private respondents herein) argued that:

1. The trial court erred in not dismissing the complaint on the ground that defendants-appellants, as officers/officials of the United States Armed Forces, are immune from suit for acts done or statements made by them in the performance of their official governmental functions in accordance with the powers possessed by them under the Philippine-American Military Bases Agreement of 1947, as amended;
2. The trial court erred in not dismissing the complaint for a) non-exhaustion of administrative remedies; and b) lack of jurisdiction of the trial court over the subject matter of the case in view of the exclusive jurisdiction of an appropriate U.S. District Court over an appeal from an agency decision on a complaint of discrimination under the U.S. Federal Law on Equality of opportunity for civilian employees;
3. The trial court erred in holding that plaintiff-appellant Loida Q. Shauf was refused appointment as guidance counselor by the defendants-appellants on account of her sex (female), color (brown), and national origin (Filipino by birth) and that the trial court erred in awarding damages to plaintiffs-appellants.[16]

As stated at the outset, respondent Court of Appeals reversed the decision of the trial court, dismissed herein petitioners' complaint and denied their motion for reconsideration. Hence this petition, on the basis of the following grounds:

The respondent Honorable Court of Appeals has decided a question of substance not in accord with law and/or with applicable decisions of this Honorable Court. Respondent court committed grave error in dismissing plaintiffs-appellants' complaint and -

- (a) in holding that private respondents are immune from suit for discriminatory acts performed without or in excess of, their authority as officers of the U.S. Armed Forces;
- (b) for applying the doctrine of state immunity from suit when it is clear that the suit is not against the U.S. Government or its Armed Forces; and
- (c) for failing to recognize the fact that the instant action is a pure and simple case for damages based on the discriminatory and malicious acts committed by private respondents in their individual capacity who by force of circumstance and accident are officers of the U.S. Armed Forces, against petitioner Loida Shauf solely on account of the latter's sex (female), color (brown), and national origin (Filipino).[17]

Petitioners aver that private respondents are being sued in their private capacity for discriminatory acts performed

beyond their authority, hence the instant action is not a suit against the United States Government which would require its consent.

Private respondents, on the other hand, claim that in filing the case, petitioners sought a judicial review by a Philippine court of the official actuations of respondents as officials of a military unit of the U.S. Air Force stationed at Clark Air Base. The acts complained of were done by respondents while administering the civil service laws of the United States. The acts sued upon being a governmental activity of respondents, the complaint is barred by the immunity of the United States, as a foreign sovereign, from suit without its consent and by the immunity of the officials of the United States armed forces for acts committed in the performance of their official functions pursuant to the grant to the United States armed forces of rights, power and authority within the bases under the Military Bases Agreement. It is further contended that the rule allowing suits against public officers and employees for unauthorized acts, torts and criminal acts is a rule of domestic law, not of international law. It applies to cases involving the relations between private suitors and their government or state, not the relations between one government and another from which springs the doctrine of immunity of a foreign sovereign.

I. The rule that a state may not be sued without its consent, now expressed in Article XVI, Section 3, of the 1987 Constitution, is one of the generally accepted principles of international law that we have adopted as part of the law of our land under Article II, Section 2. This latter provision merely reiterates a policy earlier embodied in the 1935 and 1973 Constitutions and also intended to manifest our resolve to abide by the rules of the international community.[18]

While the doctrine appears to prohibit only suits against the state without its consent, it is also applicable to complaints filed against officials of the state for acts allegedly performed by them in the discharge of their duties. The rule is that if the judgment against such officials will require the state itself to perform an affirmative act to satisfy the same, such as the appropriation of the amount needed to pay the damages awarded against them, the suit must be regarded as against the state itself although it has not been formally impleaded.[19] It must be noted, however, that the rule is not so all-encompassing as to be applicable under all circumstances.

It is a different matter where the public official is made to account in his capacity as such for acts contrary to law and injurious to the rights of plaintiff. As was clearly set forth by Justice Zaldivar in *Director of the Bureau of Telecommunications, et al. vs. Aligaen, etc., et al.*:[20] "Inasmuch as the State authorizes only legal acts by its officers, unauthorized acts of government officials or officers are not acts of the State, and an action against the officials or officers by one whose rights have been invaded or violated by such acts, for the protection of his rights, is not a suit against the State within the rule of immunity of the State from suit. In the same tenor, it has been said that an action at law or suit in equity against a State officer or the director of a State department on the ground that, while claiming to act for the State, he violates or invades the personal and property rights of the plaintiff, under an unconstitutional act or under an assumption of authority which he does not have, is not a suit against the State within the constitutional provision that the State may not be sued without its consent." [21] The rationale for this ruling is that the doctrine of state immunity cannot be used as an instrument for perpetrating an injustice.[22]

In the case of *Baer, etc. vs. Tizon, etc., et al.*, [23] it was ruled that:

There should be no misinterpretation of the scope of the decision reached by this Court. Petitioner, as the Commander of the United States Naval Base in Olongapo, does not possess diplomatic immunity. He may therefore be proceeded against in his personal capacity or when the action taken by him cannot be imputed to the government which he represents.

Also, in *Animos, et al. vs. Philippine Veterans Affairs Office, et al.*, [24] we held that:

"x x x it is equally well-settled that where a litigation may have adverse consequences on the public treasury, whether in the disbursements of funds or loss of property, the public official proceeded against not being liable in his personal capacity, then the doctrine of non-suability may appropriately be invoked. It has no application, however, where the suit against such a functionary had to be instituted because of his failure to comply with the duty imposed by statute appropriating public funds for the benefit of plaintiff or petitioner. x x x.

The aforecited authorities are clear on the matter. They state that the doctrine of immunity from suit will not apply and may not be invoked where the public official is being sued in his private and personal capacity as an ordinary citizen. The cloak of protection afforded the officers and agents of the government is removed the moment they are sued in their individual capacity. This situation usually arises where the public official acts without authority or in excess of the powers vested in him. It is a well-settled principle of law that a public official may be liable in his personal private capacity for whatever damage he may have caused by his act done with malice and in bad faith, or beyond the scope of his authority or jurisdiction.[25]

The agents and officials of the United States armed forces stationed in Clark Air Base are no exception to this rule. In the case of *United States of America, et al. vs. Guinto, etc., et al. ante*, [26] we declared:

It bears stressing at this point that the above observations do not confer on the United States of America blanket immunity for all acts done by it or its agents in the Philippines. Neither may the other petitioners claim that they are also insulated from suit in this country merely because they have acted as agents of the United States in the discharge of their official functions.

II. The court below, in finding that private respondents are guilty of discriminating against petitioner Loida Q. Shauf on account of her sex, color and origin, categorically emphasized that:

There is ample evidence to sustain plaintiffs' complaint that plaintiff Loida Q. Shauf was refused appointment as Guidance Counselor by the defendants on account of her sex, color and origin.

She is a female, brown in color and a Filipino by origin, although married to an American who is a member of the United States Air Force. She is qualified for the vacant position of Guidance Counselor in the office of the education director at Clark Air Base. She received a Master of Arts Degree from the University of Santo Tomas, Manila, in 1971 and has completed 34 semester hours in psychology?guidance and 25 quarter hours in human behavioral science. She has also completed all course work in human behavior and counselling psychology for a doctoral degree. She is a civil service eligible. More important, she had functioned as a Guidance Counselor at the Clark Air Base at the GS-1710-9 level for approximately four years at the time she applied for the same position in 1976.

In filling the vacant position of Guidance Counselor, defendant Persi did not even consider the application of plaintiff Loida Q. Shauf, but referred the vacancy to CORRO which appointed Edward B. Isakson who was not eligible to the position.

In defending his act, defendant Persi gave as his excuse that there was a question in his mind regarding the validity of plaintiff Loida Q. Shauf's work experience because of lack of record. But his assertion is belied by the fact that plaintiff Loida Q. Shauf had previously been employed as Guidance Counselor at the Clark Air Base in 1971 and this would have come out if defendant Persi had taken the trouble of interviewing her. Nor can defendant free himself from any blame for the non-appointment of plaintiff Loida Q. Shauf by claiming that it was CORRO that appointed Edward B. Isakson. This would not have happened if defendant Persi adhered to the regulation that limits the appointment to the position of Guidance Counselor, GS-1710-9 to qualified dependents of military personnel of the Department of Defense who are locally available like the plaintiff Loida Q. Shauf. He should not have referred the matter to CORRO. Furthermore, defendant Persi should have protested the appointment of Edward B. Isakson who was ineligible for the position. He, however, remained silent because he was satisfied with the appointment.

Likewise, the acts of the defendant Detwiler in rejecting the appointment of plaintiff Loida Q. Shauf were undoubtedly discriminatory.

Plaintiff Loida Q. Shauf twice applied for the position of Guidance Counselor sometime in 1975 and in October 1978. Although she was qualified for the position, her appointment was rejected by the defendant Detwiler. The two who were appointed, a certain Petrucci and Edward B. Isakson, were ordered removed by the U.S. Civil Service Commission. Instead of replacing Petrucci with the plaintiff Loida Q. Shauf, the defendant Detwiler had the position vacated by Petrucci abolished. And in the case of Edward Isakson, the defendant Detwiler ignored the order of the U.S. Civil Service Commission to have him removed according to the testimony of plaintiff Loida Q. Shauf.

In connection with her complaint against the defendants, plaintiff Loida Q. Shauf was presented a Notice of Proposed Disposition of her Discrimination Complaint by Col. Charles J. Corey, Vice Commander, Third Combat Support Group, Clark Air Base, which would entitle her to a temporary appointment as Guidance Counselor with the implied assurance that she would be appointed in a permanent capacity in the event of a vacancy.

At the time of the issuance of said Notice, defendants knew that there would be a vacancy in a permanent position as Guidance Counselor occupied by Mrs. Mary Abalateo and it was understood between Col. Corey and plaintiff Loida Q. Shauf that this position would be reserved for her. Knowing this arrangement, defendant Detwiler rejected the request for extension of services of Mrs. Mary Abalateo. However, after plaintiff Loida Q. Shauf consented to the terms of the Notice of Proposed Disposition of her Discrimination Complaint, defendant Detwiler extended the services of Mrs. Mary Abalateo indefinitely. This act barred plaintiff Loida Q. Shauf from applying for the position of Mrs. Mary Abalateo.

To rebut the evidence of the plaintiffs, defendants cited the findings and conclusions of Mr. Rudolph Duncan, who was appointed to investigate plaintiff Loida Q. Shauf's complaint for discrimination and Col. Charles J. Corey, Vice Commander, Third Combat Support Group that defendants were not guilty of discrimination.

It is pointed out, however, that Mr. Rudolph Duncan found plaintiff Loida Q. Shauf to be highly qualified for the position of Guidance Counselor at the GS-1710-9 level and that management should have hired a local applicant. While Col. Corey characterized the act of defendant Persi as sloppy and recommended that he be reprimanded. In any event their findings and conclusions are not binding with this Court.

To blunt the accusation of discrimination against them, defendants maintained that the extension of the appointment of Mrs. Mary Abalateo was a joint decision of management and Central Civilian Personnel Office, Clark Air Base. Nonetheless, having earlier rejected by himself the request for extension of the services of Mrs. Mary Abalateo, defendant Detwiler should not have concurred to such an extension as the reversal of his stand gave added substance to the charge of discrimination against him.

To further disprove the charge that the defendants discriminated against plaintiff Loida Q. Shauf for her non-appointment as Guidance Counselor on account of her being a Filipino and a female, counsel for the defendants cited the following: (1) that Mrs. Mary Abalateo whose appointment was extended by the defendant Detwiler is likewise a female and a Filipino by origin; (2) that there are Filipinos employed in the office of the defendant Persi; and (3) that there were two other women who applied in 1976 with the plaintiff Loida Q. Shauf for the position of Guidance Counselor.

The contention of the defendants based on the allegations enumerated in Nos. 1 and 2 of the preceding paragraph is without merit as there is no evidence to show that Mrs. Mary Abalateo and the Filipinos in the office of the defendant Persi were appointed by the defendants. Moreover, faced with a choice between plaintiff Loida Q. Shauf or Mrs. Mary Abalateo, it was to be expected that defendant Detwiler chose to retain Mrs. Mary Abalateo as Guidance Counselor in retaliation for the complaint of discrimination filed against him by plaintiff Loida Q. Shauf. Finally, as to the contention based on the allegation in No. 3 of the preceding

paragraph that there were two other women applicants in 1976 with plaintiff Loida Q. Shauf, the record reveals that they had minimum qualifications unlike plaintiff Loida Q. Shauf who was highly qualified.[27]

Elementary is the rule that the conclusions and findings of fact of the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons.[28] Absent any substantial proof, therefore, that the trial court's decision was grounded entirely on speculations, surmises or conjectures, the same must be accorded full consideration and respect. This should be so because the trial court is, after all, in a much better position to observe and correctly appreciate the respective parties' evidence as they were presented.[29]

In the case at bar, there is nothing in the record which suggests any arbitrary, irregular or abusive conduct or motive on the part of the trial judge in ruling that private respondents committed acts of discrimination for which they should be held personally liable. His conclusion on the matter is sufficiently borne out by the evidence on record. We are thus constrained to uphold his findings of fact.

Respondent Court of Appeals, in its questioned decision, states that private respondents did, in fact, discriminate against petitioner Loida Q. Shauf. However, it deemed such acts insufficient to prevent an application of the doctrine of state immunity, contrary to the findings made by the trial court. It reasons out that "[t]he parties involved are all American citizens (although plaintiff is a Filipina by origin) and the appointment of personnel inside the base is clearly a sovereign act of the United States. This is an internal affair in which we cannot interfere without having to touch some delicate constitutional issues." [30] In other words, it believes that the alleged discriminatory acts are not so grave in character as would justify the award of damages.

In view of the apparent discrepancy between the findings of fact of respondent Court of Appeals and the trial court, we are tasked to review the evidence in order to arrive at the correct findings based on the record. A consideration of the evidence presented supports our view that the court a quo was correct in holding herein private respondents personally liable and in ordering the indemnification of petitioner Loida Q. Shauf. The records are clear that even prior to the filing of the complaint in this case, there were various reports and communications issued on the matter which, while they make no categorical statement of the private respondents' liability, nevertheless admit of facts from which the intent of private respondents to discriminate against Loida Q. Shauf is easily discernible. Witness the following pertinent excerpts from the documents extant in the folder of Plaintiff's Exhibits:

1. Notice of Proposed Disposition of Discrimination Complaint, dated May 16, 1977 (Exhibit "G").

B. Mr. Anthony Persi was totally inept in the recruitment practices employed in attempting to fill the GS 1710-9 Assistant Education Advisor. He failed to follow standardized procedures as outlined in applicable DOD regulations. In addition, he failed to conduct an interview of qualified personnel in the local environment and when the qualifications of the complainant (sic) were questioned by Mr. Persi he did not request a review by the CCPO nor request an interview with the complainant (sic). Mr. Persi failed to follow Department of Defense Instructions Number 1400.23, under Policy and Procedures which states - "Where qualified dependents of military or civilian personnel of the Department of Defense are locally available for appointment to positions in foreign areas which are designated for US citizen occupancy and for which recruitment outside the current work force is appropriate, appointment to the positions will be limited to such dependents unless precluded by treaties or other agreements which provide for preferential treatment for local nationals." Attachment to Air Force Supplement to FPM 213.2106(b)(6) lists the positions of Guidance Counsellor, GS 1710-9, as positions to be filled by locally available dependents. An added point is the lack of qualifications of the individual selected for the GS 1710-9 positions as outlined under X-118 Civil Service Handbook. x x x[31]

2. Letter of the Director of the U.S. Civil Service Commission, San Francisco Region, dated October 27, 1977, addressed to Mr. Don Detwiler, concerning Mr. Edward B. Isakson whose file was reviewed by the Commission

(Exhibit "K").

The position of Guidance Counsellor is one for which the Commission has established a mandatory education requirement that may not be waived. An individual may not be assigned to such a position without meeting the minimum qualification requirements. The requirements, as given in Handbook X-118, are completion of all academic requirements for a bachelor's degree from an accredited college or university and successful completion of a teacher education program under an "approved program" or successful completion of required kinds of courses.

On review of his record, we find that Mr. Isakson has a bachelor's degree but he does not show completion of a teacher education program. To qualify for Guidance Counselor on the basis of coursework and semester hour credit, he would need to have 24 semester hours in Education and 12 semester hours in a combination of Psychology and Guidance subjects directly related to education. We do not find that he meets these requirements.

x x x

We can appreciate the fact that Mr. Isakson may be working toward meeting the Guidance Counselor requirements. Nonetheless, he does not appear to meet them at this time. We must, therefore, request that action be taken to remove him from the position and that efforts be made to place him in a position for which he qualifies.[32]

3. Letter of the Staff Judge Advocate of the Department of the Air Force addressed to Mr. Detwiler, dated January 25, 1977 (Exhibit "L").

1. The attached memo from Captain John Vento of this office is forwarded for your review and any action you deem appropriate. I concur with his conclusion that there is no evidence of sex or ethnic bias in this matter. I also concur, however, that there were certain irregularities in the handling of this selection.

x x x

3. Considering the above, it is most unfortunate that the filling of this latest Guidance Counsellor vacancy was not handled wholly in accordance with prescribed policies and regulations. This is not to suggest that Mrs. Shauf should necessarily have been hired. But, she and other qualified candidates should have been given the consideration to which they were entitled. (At no time now or in the past have Mrs. Shauf's qualifications ever been questioned.) Had that happened and management chose to select some qualified candidate other than Mrs. Shauf, there would be no basis for her complaint.

4. It is my understanding that Mrs. Shauf has filed a formal EEO complaint. While I am convinced that there was no discrimination in this case, my experience with EEO complaints teaches me that, if the Civil Service Commission finds that nonselection resulted from any kind of management malpractice, it is prone to brand it as a "discriminatory practice." This usually results in a remedial order which can often be distasteful to management. x x x.[33]

The initial burden is on the plaintiff to establish a prima facie case of discrimination. Once the discriminatory act is proven, the burden shifts to the defendant to articulate some legitimate, undiscriminatory reason for the plaintiff's rejection.[34] Any such justification is wanting in the case at bar, despite the prima facie case for petitioner Loida Q. Shauf. Private respondents' defense is based purely on outright denials which are insufficient to discharge the onus probandi imposed upon them. They equally rely on the assertion that they are immune from suit by reason of their official functions. As correctly pointed out by petitioners in their Memorandum, the mere invocation by private respondents of the official character of their duties cannot shield them from liability especially when the same were clearly done beyond the scope of their authority, again citing the Guinto case, supra:

The other petitioners in the cases before us all aver they have acted in the discharge of their official functions as officers or agents of the United States. However, this is a matter of evidence. The charges against them may not be summarily dismissed on their mere assertion that their acts are imputable to the United States of America, which has not given its consent to be sued. In fact, the defendants are sought to be held answerable for personal torts in which the United States itself is not involved. If found liable, they and they alone must satisfy the judgment.

III. Article XIII, Section 3, of the 1987 Constitution provides that the State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. This is a carry-over from Article II, Section 9, of the 1973 Constitution ensuring equal work opportunities regardless of sex, race, or creed.

Under the Constitution of the United States, the assurance of equality in employment and work opportunities regardless of sex, race, or creed is also given by the equal protection clause of the Bill of Rights. The 14th Amendment, in declaring that no state shall deprive a person of his life, liberty, or property without due process of law or deny to any person within its jurisdiction the equal protection of the laws, undoubtedly intended not only that there should be no arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights, and that all persons should be equally entitled to pursue their happiness and acquire and enjoy property. It extends its protection to all persons without regard to race, color, or class. It means equality of opportunity to all in like circumstances.[35]

The words "life, liberty, and property" as used in constitutions are representative terms and are intended to cover every right to which a member of the body politic is entitled under the law. These terms include the right of self-defense, freedom of speech, religious and political freedom, exemption from arbitrary arrests, the right to freely buy and sell as others may, the right to labor, to contract, to terminate contracts, to acquire property, and the right to all our liberties, personal, civil and political -- in short, all that makes life worth living.[36]

There is no doubt that private respondents Persi and Detwiler, in committing the acts complained of have, in effect, violated the basic constitutional right of petitioner Loida Q. Shauf to earn a living which is very much an integral aspect of the right to life. For this, they should be held accountable.

While we recognize petitioner Loida Q. Shauf's entitlement to an award of moral damages, we however find no justification for the award of actual or compensatory damages, based on her supposedly unearned income from March, 1975 up to April, 1978 in the total amount of \$39,662.49, as erroneously granted by the trial court.

Evidence that the plaintiff could have bettered her position had it not been for the defendants' wrongful act cannot serve as basis for an award of damages, because it is highly speculative.[37] Petitioner Loida Q. Shauf's claim is merely premised on the possibility that had she been employed, she would have earned said amount. But, the undeniable fact remains that she was never so employed. Petitioner never acquired any vested right to the salaries pertaining to the position of GS 1710-9 to which she was never appointed. Damages which are merely possible are speculative.[38] In determining actual damages, the court cannot rely on speculation, conjecture or guesswork. Without the actual proof of loss, the award of actual damages is erroneous.[39] Consequently, the award of actual damages made by the trial court should be deleted. Attorney's fees, however, may be granted and we believe that an award thereof in the sum of P20,000.00 is reasonable under the circumstances.

IV. Finally, private respondents postulate that petitioner Loida Q. Shauf failed to avail herself of her remedy under the United States federal legislation on equality of opportunity for civilian employees, which is allegedly exclusive of any other remedy under American law, let alone remedies before a foreign court and under a foreign law such as the Civil Code of the Philippines.

In a letter of the Department of the Air Force in Washington, D.C., dated September 1, 1978 and addressed to petitioner Loida Q. Shauf,[40] the appeal rights of the latter from the Air Force decision were enumerated as follows:

- You may appeal to the Civil Service Commission within 15 calendar days of receipt of the decision. Your appeal should be addressed to the Civil Service Commission, Appeals Review Board, 1990 E Street, N.W., Washington, D.C. 20415. The appeal and any representations in support thereof must be submitted in duplicate.
- In lieu of an appeal to the Commission you may file a civil action in an appropriate U.S. District Court within 30 days of receipt of the decision.
- If you elect to appeal to the Commission's Appeals Review Board, you may file a civil action in a U.S. District Court within 30 day of receipt of the Commission's final decision.
- A civil action may also be filed anytime after 180 days of the date of initial appeal to the Commission, if a final decision has not been rendered.

As earlier noted, in a Supplement to Partial Stipulation of Facts filed by the parties on October 6, 1978, it was manifested to the trial court that an appeal was lodged by counsel for petitioners on September 30, 1978 before the Civil Service Commission, Appeals Review Board from the decision of the Secretary of the Air Force in the discrimination case filed by petitioner Loida Q. Shauf, No. SF 071380181. Said appeal has not been decided up to now.

Furthermore, it is basic that remedial statutes are to be construed liberally. The term "may," as used in adjective rules, is only permissive and not mandatory, and we see no reason why the so-called rules on the above procedural options communicated to said petitioner should depart from this fundamental principle. Petitioner Loida Q. Shauf is not limited to these remedies, but is entitled as a matter of plain and simple justice to choose that remedy, not otherwise proscribed, which will best advance and protect her interests. There is, thus, nothing to enjoin her from seeking redress in Philippine courts which should not be ousted of jurisdiction on the dubious and inconclusive representations of private respondents on that score.

WHEREFORE, the challenged decision and resolution of respondent Court of Appeals in CA-G.R. CV No. 17932 are hereby ANNULLED and SET ASIDE. Private respondents are hereby ORDERED, jointly and severally, to pay petitioners the sum of P100,000.00 as moral damages, P20,000.00 as and for attorney's fees, and the costs of suit.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Associate Justice Jose A.R. Melo, ponente, with Justices Alfredo L. Benipayo and Abelardo M. Dayrit, concurring; Annex A, Petition; Rollo, 26.

[2] Rollo, 32-33.

[3] Partial Stipulation of Facts, 2-4; Original Record, 134-136.

[4] Rollo, 107.

[5] Report of Investigation, Equal Opportunity Complaint of Mrs. Loida Q. Shauf, E-77-154; Exhibit M, Plaintiff's Exhibits, 22-29.

- [6] Exhibit M; Plaintiffs' Exhibits, 26-27.
- [7] Ibid., 28.
- [8] Exhibit G; *ibid.*, 12.
- [9] Exhibit J; *ibid.*, 17.
- [10] Exhibit K; *ibid.*, 18.
- [11] Exhibit N; *ibid.*, 30.
- [12] Original Record, 133-134.
- [13] *Ibid.*, 186-187,
- [14] Rollo, 112.
- [15] Brief for the Plaintiffs, 6; Rollo, 58.
- [16] Rollo, 12-13, 35.
- [17] *Ibid.*, 13-14.
- [18] United States of America, et al. vs. Guinto, etc., et al., G.R. No. 76607, February 26, 1990.
- [19] *Id.*

[20] 33 SCRA 368 (1970).

- [21] Ministerio, et al. vs. Court of First Instance of Cebu, etc., et al., 40 SCRA 464 (1971).
- [22] Sanders, et al. vs. Veridiano, etc., et al., 162 SCRA 88 (1988).

[23] 57 SCRA 1 (1974).

[24] 174 SCRA 214 (1989).

- [25] Dumlao vs. Court of Appeals, et al., 114 SCRA 247 (1982).
- [26] Footnote 18.
- [27] Rollo, 107-111.
- [28] Vda. de Alberto, etc., et al. vs. Court of Appeals, et al., 173 SCRA 436 (1989).
- [29] Matabuena vs. Court of Appeals, et al., 173 SCRA 170 (1989).
- [30] Rollo, 37.
- [31] Plaintiff's Exhibits, 12.
- [32] *Ibid.*, 18-19.
- [33] *Ibid.*, 20-21.
- [34] McDonnell Douglas Corp. vs. Precy Green, 36 L Ed 2d 668.
- [35] 16 Am. Jur. 2d 577, 846, 849.

[36] *Op. cit.*, 683.

[37] *Osmeña & Associates vs. Court of Appeals, et al.*, 120 SCRA 395 (1983).

[38] 25 C.J.S. 677.

[39] *Guilatco vs. City of Dagupan, et al.*, 171 SCRA 382 (1989).

[40] Exhibit 2; Defendants' Exhibits, 314-315.

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