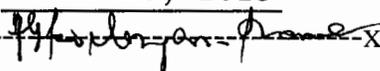


EN BANC

G.R. No. 194192 – DAVAO CITY WATER DISTRICT represented by its General Manager, RODORA N. GAMBOA, Petitioner, v. RODRIGO L. ARANJUEZ, ET AL., Respondents.

Promulgated:

June 16, 2015

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CONCURRING OPINION

LEONEN, J.:

I concur in the result.

This case involves freedom of expression in the context of airing workplace grievances on employment benefits in the public sector, the constitutional right to self-organization, and peaceful concerted activities. Specifically, during their office anniversary celebrations, respondents wore matching t-shirts that stated their plea for payment of CNA incentive: “CNA Incentive *Ihatag Na, Dir. Braganza Pahawa na!*”

The ponencia<sup>1</sup> quoted *GSIS v. Villaviza*<sup>2</sup> involving Government Service Insurance System employees who wore red during a public hearing at their office while raising their fists and orating against then President Winston Garcia. This court held that such act was not constitutive of a prohibited activity but only an exercise of their constitutional right to freedom of expression.<sup>3</sup> The ponencia mentioned the government employees’ limited right to freedom of expression as follows:

It is correct to conclude that those who enter government service are subjected to a different degree of limitation on their freedom to speak their mind; however, it is not tantamount to the relinquishment of their constitutional right of expression otherwise enjoyed by citizens just by reason of their employment. Unarguably, a citizen who accepts public employment “must accept certain limitations on his or her freedom.” But there are some rights and freedoms so fundamental to liberty that they cannot be bargained away in a contract for public employment. It is the Court’s responsibility to ensure that citizens are not deprived of these fundamental rights by virtue of working for the government.

The *GSIS* case pronounced:

Government workers, whatever their ranks, have as much right as any person in the land to voice out their protests against what they believe to be a violation of their rights and interests. Civil Service does not deprive them of

<sup>1</sup> Ponencia, p. 14.

<sup>2</sup> 640 Phil. 18 (2010) [Per J. Mendoza, En Banc].

<sup>3</sup> Ponencia, p. 14, *citing* 640 Phil. 18, 29 (2010) [Per J. Mendoza, En Banc].



their freedom of expression. It would be unfair to hold that by joining the government service, the members thereof have renounced or waived this basic liberty. This freedom can be reasonably regulated only but can never be taken away.

In simple paraphrase we say, regulation of the freedom of expression is not removal of constitutional right.<sup>4</sup>

Freedom to express one's views enjoys a level of primacy among our constitutional guarantees, but it has never been considered to be absolute and immune from reasonable regulation. However, there is always a higher degree of judicial review of regulation that affects speech to ensure, among others, that it does not amount to a disguised form of censorship or that its exercise does not burden the same exercise of the same rights by others. Even civil service regulations should hew closely to the parameters of the freedoms guaranteed in our Constitution.

Exercising one's right to air grievances in relation to employment in the public sector, as in this case, should also be given protection but with the added requirement that the exercise of the guarantee of freedom to express does not unduly deter the government agency's primary functions.

Thus, the pronouncements in this case must be limited only to its context, that is, expressions in t-shirts during the office anniversary where there was no showing that that exercise obstructed or eroded the public functions of the government agency involved.

In the determination of the extent of the exercise of this fundamental freedom, the nature of the government agencies where there may be some employment grievances should be taken into consideration. There are some, like the uniformed military and police services requiring a greater degree of discipline within its ranks, where certain forms of expression—not part of the ambient facts of this case—may not be constitutionally permissible.

## I

Republic Act No. 875 known as the Industrial Peace Act was passed in 1953 in order to, among others, “eliminate the causes of industrial unrest by encouraging and protecting the exercise by employees of their right to self-organization for the purpose of collective bargaining and for the promotion of their moral, social, and economic well-being.”<sup>5</sup> This early law prohibited government employees from engaging in strikes to secure changes in their

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<sup>4</sup> Ponencia, pp. 14–15, citations omitted.

<sup>5</sup> Rep. Act No. 875 (1953), sec. 1(a).

employment terms and conditions:

SEC. 11. *Prohibition Against Strikes in the Government.*—The terms and conditions of employment in the Government, including any political subdivision or instrumentality thereof, are governed by law and it is declared to be the policy of this Act that employees therein shall not strike for the purpose of securing changes or modification in their terms and conditions of employment, Such employees may belong to any labor organization which does not impose the obligation to strike or to join in strike: Provided, however, ***That this section shall apply only to employees employed in governmental functions and not to those employed in proprietary functions of the Government including but not limited to governmental corporations.***<sup>6</sup> (Emphasis supplied)

The last sentence differentiates between employees of government bodies that exercise governmental functions, and employees of those that exercise proprietary functions such as government corporations. The latter are not covered by the prohibition.

Presidential Decree No. 442 known as the Labor Code was passed in 1974. This changed the policy by “‘exempt[ing]’ . . . government employees, including employees of government-owned and/or controlled corporations[,]”<sup>7</sup> from the right to self-organization for purposes of collective bargaining.<sup>8</sup> It provides that the Civil Service Law rules and regulations govern even the government-owned and controlled corporations:

Article 276. *Government employees.* The terms and conditions of employment of all government employees, including employees of government-owned and controlled corporations, shall be governed by the Civil Service Law, rules and regulations. Their salaries shall be standardized by the National Assembly as provided for in the new constitution. However, there shall be no reduction of existing wages, benefits and other terms and conditions of employment being enjoyed by them at the time of the adoption of this Code.<sup>9</sup>

*Alliance of Government Workers v. Minister of Labor*<sup>10</sup> ruled that petitioner government workers have the right to form associations, shared with all in public service, “[b]ut they may not join associations which impose the obligation to engage in concerted activities in order to get salaries, fringe benefits, and other emoluments higher than or different from

<sup>6</sup> Rep. Act No. 875 (1953), sec. 11.

<sup>7</sup> *Arizala v. Court of Appeals*, G.R. Nos. L-43633–34, September 14, 1990, 189 SCRA 584, 593 [Per J. Narvasa, First Division], *citing* Implementing Rules and Regulations, book V, rule 11, sec. 1.

<sup>8</sup> *Id.*

<sup>9</sup> Pres. Decree No. 442 (1974), sec. 276.

<sup>10</sup> 209 Phil. 1 (1983) [Per J. Gutierrez, Jr., En Banc].

that provided by law and regulation.”<sup>11</sup> Laws that allow employees of agencies discharging proprietary functions to engage in strikes or other concerted activities belong to the past.<sup>12</sup>

Government-owned and controlled corporations were further differentiated in 1986 when former President Corazon C. Aquino issued Executive Order No. 111 granting employees “of government corporations established under the Corporation Code the right to organize and to bargain collectively with their respective employers.”<sup>13</sup> Thus, this differentiated employees of government corporations established by law having their own charter from those established under the Corporation Code.

Executive Order No. 180 was enacted in June 1, 1987 entitled Providing Guidelines for the Exercise of the Right to Organize of Government Employees, Creating a Public Sector Labor-Management Council, and for Other Purposes. This order “applies to all employees of all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.”<sup>14</sup>

Also enacted in 1987, our present Constitution provides that “the right to self-organization shall not be denied to government employees[,]”<sup>15</sup> and the state “shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law.”<sup>16</sup>

The Constitution’s Bill of Rights also provides that “[n]o law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition government for redress of grievances.”<sup>17</sup>

We read this constitutional provision on the right to freedom of expression together with the other constitutional provisions, laws, jurisprudence, and implementing rules and regulations that reflect the state’s policy on the different government employees’ right to peaceful concerted activities and to self-organization for purposes of collective bargaining.

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<sup>11</sup> Id. at 21.

<sup>12</sup> Id. at 16.

<sup>13</sup> *Arizala v. Court of Appeals*, G.R. Nos. L-43633–34, September 14, 1990, 189 SCRA 584, 595 [Per J. Narvasa, First Division], *citing* LABOR CODE, art. 224; book V, rule 11, sec. 1, Implementing Rules and Regulations, as amended by sec. 3, Implementing Rules and Regulations, Exec. Order No. 111.

<sup>14</sup> Exec. Order No. 180 (1987), sec. 1.

<sup>15</sup> CONST., art. IX-B, sec. 2(5).

<sup>16</sup> CONST., art. XIII, sec. 3.

<sup>17</sup> CONST., art. III, sec. 4.

This brings us to a limited or regulated right to freedom of expression by government employees in differing levels of limitation depending on the nature of functions discharged by the different government branches, departments, bureaus, offices, and other government agencies and instrumentalities.

## II

Freedom of expression is guaranteed in its fullest outside government but, perhaps, more regulated when one assumes the role of a public officer. The right to speech is inherent. However, the act of joining a government office should be construed as an understanding that the individual's exercise of this basic right is subsumed by the necessity of providing public services to the greater majority.

The limits are inherent in the nature of governance. The Constitution states that “[p]ublic officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.”<sup>18</sup>

Republic Act No. 6713<sup>19</sup> known as the Code of Conduct and Ethical Standards of Public Officials and Employees thus provides for the following norms of conduct:

Section 4. *Norms of Conduct of Public Officials and Employees.* -

(A) Every public official and employee shall observe the following as standards of personal conduct in the discharge and execution of official duties:

(a) Commitment to public interest. - ***Public officials and employees shall always uphold the public interest over and above personal interest.*** All government resources and powers of their respective offices must be employed and used efficiently, effectively, honestly and economically, particularly to avoid wastage in public funds and revenues.

(b) Professionalism. - Public officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill. They shall enter public service with utmost devotion and dedication to duty. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage.

(c) Justness and sincerity. - Public officials and employees shall remain true to the people at all times. They must act with justness and sincerity and shall not discriminate against anyone, especially

<sup>18</sup> CONST., art. XI, sec. 1.

<sup>19</sup> This was approved on February 20, 1989.

the poor and the underprivileged. They shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest. They shall not dispense or extend undue favors on account of their office to their relatives whether by consanguinity or affinity except with respect to appointments of such relatives to positions considered strictly confidential or as members of their personal staff whose terms are coterminous with theirs.

(d) Political neutrality. - Public officials and employees shall provide service to everyone without unfair discrimination and regardless of party affiliation or preference.

(e) Responsiveness to the public. - Public officials and employees shall extend prompt, courteous, and adequate service to the public. Unless otherwise provided by law or when required by the public interest, public officials and employees shall provide information of their policies and procedures in clear and understandable language, ensure openness of information, public consultations and hearings whenever appropriate, encourage suggestions, simplify and systematize policy, rules and procedures, avoid red tape and develop an understanding and appreciation of the socio-economic conditions prevailing in the country, especially in the depressed rural and urban areas.

(f) Nationalism and patriotism. - Public officials and employees shall at all times be loyal to the Republic and to the Filipino people, promote the use of locally produced goods, resources and technology and encourage appreciation and pride of country and people. They shall endeavor to maintain and defend Philippine sovereignty against foreign intrusion.

(g) Commitment to democracy. - Public officials and employees shall commit themselves to the democratic way of life and values, maintain the principle of public accountability, and manifest by deeds the supremacy of civilian authority over the military. They shall at all times uphold the Constitution and put loyalty to country above loyalty to persons or party.

(h) Simple living. - Public officials and employees and their families shall lead modest lives appropriate to their positions and income. They shall not indulge in extravagant or ostentatious display of wealth in any form

(B) The Civil Service Commission shall adopt positive measures to promote (1) observance of these standards including the dissemination of information programs and workshops authorizing merit increases beyond regular progression steps, to a limited number of employees recognized by their office colleagues to be outstanding in their observance of ethical standards; and (2) continuing research and experimentation on measures which provide positive motivation to public officials and employees in raising the general level of observance of these standards. (Emphasis supplied)

Public accountability and a commitment to giving priority to the public interest above private ones demand some level of limitation on the exercise of the right to freedom of expression by government employees.

### III

Among a water district office, the judiciary, the police and the military, and other government offices, there are differing levels of expression constitutionally allowed.

Traditional classifications distinguish between those that perform governmental or sovereign functions and those that exercise proprietary functions.<sup>20</sup> The Bases Conversion and Development Authority, for example, exercises proprietary functions. *Shipside Inc. v. Court of Appeals*<sup>21</sup> discusses how the Bases Conversion and Development Authority has a separate and distinct personality from the government:

We, however, must not lose sight of the fact that the BCDA is an entity invested with a personality separate and distinct from the government. Section 3 of Republic Act No. 7227 reads:

*Section 3. Creation of the Bases Conversion and Development Authority.* – There is hereby created a body corporate to be known as the Conversion Authority which shall have the attribute of perpetual succession and shall be vested with the powers of a corporation.

It may not be amiss to state at this point that the functions of government have been classified into governmental or constituent and proprietary or ministrant. While public benefit and public welfare, particularly, the promotion of the economic and social development of Central Luzon, may be attributable to the operation of the BCDA, yet it is certain that the functions performed by the BCDA are basically proprietary in nature. The promotion of economic and social development of Central Luzon, in particular, and the country's goal for enhancement, in general, do not make the BCDA equivalent to the Government. Other corporations have been created by government to act as its agents for the realization of its programs, the SSS, GSIS, NAWASA and the NIA, to count a few, and yet, the Court has ruled that these entities, although performing functions aimed at promoting public interest and public welfare, are not government-function corporations invested with governmental attributes. ***It may thus be said that the BCDA is not a mere agency of the Government but a corporate body performing proprietary functions.***<sup>22</sup> (Emphasis supplied)

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<sup>20</sup> See *Alliance of Government Workers v. Minister of Labor*, 209 Phil. 1 (1983) [Per J. Gutierrez, Jr., En Banc].

<sup>21</sup> 404 Phil. 981 (2001) [Per J. Melo, Third Division].

<sup>22</sup> *Shipside, Inc. v. Court of Appeals*, 404 Phil. 981, 999 (2001) [Per J. Melo, Third Division].

Government-owned and controlled corporations also exercising proprietary functions, not “mere agenc[ies] of the Government,” should thus have a wider scope of freedom of expression compared to other government agencies.

*GSIS v. Villaviza*<sup>23</sup> involving Government Service Insurance System employees held that “[n]ot all collective activity or mass undertaking of government employees is prohibited[;] [o]therwise, we would be totally depriving our brothers and sisters in the government service of their constitutional right to freedom of expression.”<sup>24</sup> This court explained that “[i]t would be unfair to hold that by joining the government service, the members thereof have renounced or waived this basic liberty. This freedom can be reasonably regulated only but can never be taken away.”<sup>25</sup> Thus, “CSC’s Resolution No. 02-1316 defining what a prohibited concerted activity or mass action has only tempered or regulated these rights.”<sup>26</sup>

The earlier *GSIS v. Kapisanan ng Manggagawa sa GSIS*<sup>27</sup> was different. The Government Service Insurance System employees joined four days of concerted demonstrations, rallies, and *en masse* walkout from October 4 to 7, 2004.<sup>28</sup> This court held that “any collective activity undertaken by government employees with the intent of effecting work stoppage or service disruption in order to realize their demands or force concession, economic or otherwise, is a prohibited concerted mass action and doubtless actionable administratively”.<sup>29</sup> This court traced jurisprudence on the matter, including *Jacinto v. Court of Appeals*<sup>30</sup> involving public school teachers on the following discussion:

Specifically, the right of civil servants to organize themselves was positively recognized in *Association of Court of Appeals Employees (ACAE) vs. Ferrer-Caleja*. But, as in the exercise of the rights of free expression and of assembly, there are standards for allowable limitations such as the legitimacy of the purposes of the association, the overriding considerations of national security and the preservation of democratic institutions.

As regards the right to strike, the Constitution itself qualifies its exercise with the provision “in accordance with law.” This is a clear manifestation that the state may, by law, regulate the use of this right, or even deny certain sectors such right. Executive Order No. 180 which provides guidelines for the exercise of the right of government workers to organize, for instance, implicitly endorsed an earlier CSC circular which “enjoins under pain of administrative sanctions, all government officers

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<sup>23</sup> 640 Phil. 18 (2010) [Per J. Mendoza, En Banc].

<sup>24</sup> Id. at 30.

<sup>25</sup> Id.

<sup>26</sup> Id. at 32.

<sup>27</sup> 539 Phil. 677 (2006) [Per J. Garcia, Second Division].

<sup>28</sup> Id. at 684.

<sup>29</sup> Id. at 694, *citing* CSC Resolution No. 021316, sec. 5.

<sup>30</sup> 346 Phil. 656 (1997) [Per J. Panganiban, En Banc].

and employees from staging strikes, demonstrations, mass leaves, walkouts and other forms of mass action which will result in temporary stoppage or disruption of public service” by stating that the Civil Service law and rules governing concerted activities and strikes in government service shall be observed.<sup>31</sup> (Citations and emphases omitted)

Employees of government-owned and controlled corporation can freely exercise their right to freedom of expression, subject to law, including Civil Service Commission issuances that prohibit mass actions causing work stoppage. Government employees must uphold their commitment to public interest and act in accordance with the Code of Conduct and Ethical Standards of Public Officials and Employees. This level of limitation or regulation also applies to governmental financial institutions, often grouped with government-owned and controlled corporations.

On the other hand, government bodies that perform governmental functions can be further classified based on different factors.

Some hold public office based on popular vote such as elected Senators and Representatives of Congress. These public officials are in the position to pass laws for better employment benefits for all government employees. Law-making involves deliberating on political questions, thus, the extent of freedom of speech appears wider for those in Congress. The Constitution even provides that “[n]o Member shall be questioned nor be held liable in any other place for any speech or debate in the Congress or in any committee thereof.”<sup>32</sup>

On the other hand, members of the judiciary must maintain independence, integrity, impartiality, propriety, equality, competence, and diligence.<sup>33</sup> “Judges, like any other citizen, are entitled to freedom of expression, belief, association and assembly, but in exercising such rights, they shall always conduct themselves in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the Judiciary.”<sup>34</sup> Thus, they must “refrain from influencing in any manner the outcome of litigation or dispute pending before another court or administrative agency.”<sup>35</sup> “Judges shall not knowingly, while a proceeding is before or could come before them, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process.”<sup>36</sup> These standards present a more limited freedom of expression for judges.

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<sup>31</sup> Id. at 669–670.

<sup>32</sup> CONST., art. VI, sec. 11.

<sup>33</sup> New Code of Judicial Conduct (2007), canon 1, sec. 3.

<sup>34</sup> New Code of Judicial Conduct (2007), canon 4, sec. 6.

<sup>35</sup> New Code of Judicial Conduct (2007).

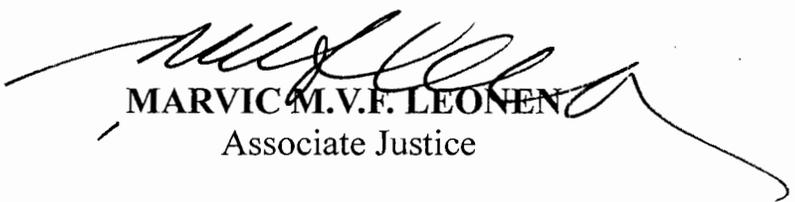
<sup>36</sup> New Code of Judicial Conduct (2007), canon 3, sec. 4.

The strictest limitation applies to those in the military and the police. They maintain peace and prevent crime. Those in the military are subject to Commonwealth Act No. 408 known as the Articles of War. Article 96 provides that “[a]ny officer, member of the Nurse Corps, cadet, flying cadet, or probationary second lieutenant, who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service.”

*Gonzales v. Abaya*<sup>37</sup> involves the July 27, 2003 incident when heavily armed Armed Forces of the Philippines members wearing red armbands with the emblem “Magdalo” entered Oakwood led by Navy Lt. Antonio Trillanes IV.<sup>38</sup> They announced in broadcast media “their grievances against the administration of [then] President Gloria Macapagal Arroyo, such as the graft and corruption in the military, the illegal sale of arms and ammunition to the “enemies” of the State, and the bombings in Davao City intended to acquire more military assistance from the US government.”<sup>39</sup> Those involved were charged with coup d'état before the regular court, and violation of the Articles of War before the military tribunal.

The constitutional right to freedom of expression belongs to all. But its exercise may be reasonably regulated. Those who chose public service embraced the public’s interest with a priority higher than their own. Their oaths signify a commitment to public accountability.<sup>40</sup> This obligation necessarily imposes more regulation of the exercise of their freedom of expression. The extent of this regulation and its parameters will need to be more clearly defined in a more appropriate case.

ACCORDINGLY, I concur in the result.



MARVIC M.V.F. LEONEN  
Associate Justice

<sup>37</sup> 530 Phil. 189 (2006) [Per J. Sandoval-Gutierrez, En Banc].

<sup>38</sup> *Id.* at 202.

<sup>39</sup> *Id.*

<sup>40</sup> *See* CONST., art. XI, sec. 1; Rep. Act No. 6713 (1989), sec. 4.