

EN BANC

G.R. No. 207145 – GIL G. CAWAD, ET AL., *petitioners*, v. FLORENCIO B. ABAD, ET AL., *respondents*.

Promulgated:

July 28, 2015

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*[Handwritten Signature]*

CONCURRING and DISSENTING OPINION

LEONEN, J.:

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

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

I

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

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

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

In *Tañada v. Angara*,<sup>2</sup> this court's duty was characterized as follows:

<sup>1</sup> Rep. Act No. 7305 was approved on March 26, 1992.

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

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As explained by former Chief Justice Roberto Concepcion, “the judiciary is the final arbiter on the question of whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.”

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

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

In addition, this court recently clarified in *Araullo v. Aquino III*:<sup>4</sup>

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

The Department of Budget and Management promulgated joint circulars in clear and patent breach of Republic Act No. 7305. The joint circulars appear to be based on Joint Resolution No. 4, Series of 2009, which amended several laws.<sup>6</sup> The implementation of the joint circulars is

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<sup>3</sup> Id. at 574–575.

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

<sup>5</sup> Id. at 74.

<sup>6</sup> Joint Resolution No. 4 amends the following laws: Rep. Act No. 7305 (1992) or the Magna Carta of Public Health Workers; Rep. Act No. 4670 (1966) or the Magna Carta for Public School Teachers; Rep. Act No. 8439 (1997) or the Magna Carta for Scientists, Engineers, Researchers and Other Science and Technology Personnel in Government; Rep. Act No. 9433 (2007) or the Magna Carta for Public Social Workers; Rep. Act No. 8551 (1998) or the Philippine National Police Reform and Reorganization Act of 1998; Exec. Order No. 107 (1999) or Specifying the Salary Grades of the Officers and Enlisted Personnel of the Philippine National Police pursuant to Section 36 of Republic Act No. 8551, otherwise known as the Philippine National Police Reform and Reorganization Act of 1998; Rep. Act No. 9166 (2002) or An Act Promoting the Welfare of the Armed Forces of the

imminent and affects a critical sector of government employees. The parties' positions have thus become sufficiently adversarial and properly framed within clear factual ambients.

## II

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

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

....

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

However, it appears that the joint circulars were issued without the Secretary of the Department of Health consulting with the Management-Health Workers' Consultative Council. It also appears that the assailed joint circulars<sup>7</sup> were issued pursuant to Joint Circular No. 4, Series of 2009.<sup>8</sup> Joint Resolution No. 4 is entitled "Joint Resolution Authorizing the President of the Philippines to Modify the Compensation and Position

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Philippines by Increasing the Rate of Base Pay and other Benefits of its Officers and Enlisted Personnel and for Other Purposes; Rep. Act No. 9286 (2004) or An Act Further Amending Presidential Decree No. 198, otherwise known as The Provincial Water Utilities Act of 1973, as amended; Rep. Act No. 7160 (1991) or the Local Government Code of 1991; Rep. Act No. 9173 (2002) or the Philippine Nursing Act of 2002.

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

<sup>8</sup> Ponencia, p. 7.

Classification System of Civilian Personnel and the Base Pay Schedule of Military and Uniformed Personnel in the Government, and for Other Purposes.”<sup>9</sup>

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

### 1.0 Background Information

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

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

<sup>10</sup> Joint Resolution No. 4 (2008), item 6 provides:

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

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

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

<sup>11</sup> Rules and Regulations on the Grant of Compensation-Related Magna Carta Benefits to Public Health Workers (PHWs) (2012).

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

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

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

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<sup>12</sup> CONST., art. VI, secs. 26 and 27 provide:

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

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

SECTION 27. (1) Every *bill* passed by the Congress shall, before it becomes a law, be presented to the President. If he approves the same, he shall sign it; otherwise, he shall veto it and return the same with his objections to the House where it originated, which shall enter the objections at large in its Journal and proceed to reconsider it. If, after such reconsideration, two-thirds of all the Members of such House shall agree to pass the bill, it shall be sent, together with the objections, to the other House by which it shall likewise be reconsidered, and if approved by two-thirds of all the Members of that House, it shall become a law. In all such cases, the votes of each House shall be determined by yeas or nays, and the names of the Members voting for or against shall be entered in its Journal. The President shall communicate his veto of any bill to the House where it originated within thirty days after the date of receipt thereof; otherwise, it shall become a law as if he had signed it.

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

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

**Section. 58. Third Reading.** . . .

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

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

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

### 1.0 Background

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

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

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

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

### III

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

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

<sup>14</sup> *Rollo*, pp. 32–33.

<sup>15</sup> Ponencia, p. 16.

#### IV

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

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

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

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

Section 35 of Republic Act No. 7305 states:

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

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<sup>16</sup> Id. at 11–14.

<sup>17</sup> Id. at 14.

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

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

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

## V

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

Book VII, Chapter 2, Section 3 of the Administrative Code<sup>21</sup> provides that:

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

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

<sup>19</sup> Id. at 399.

<sup>20</sup> Ponencia, p. 15.

<sup>21</sup> Exec. Order No. 292 (1987).



date shall not thereafter be the basis of any sanction against any party or persons.

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

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

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

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

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

The assailed joint circulars can be considered as “rules” that must be deposited with the Office of the National Administrative Register. These circulars provide guidelines for the implementation of the benefits provided under Republic Act No. 7305.

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

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

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

measures to make emergency rules known to persons who may be affected by them.

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

## VI

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

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

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<sup>23</sup> Id.

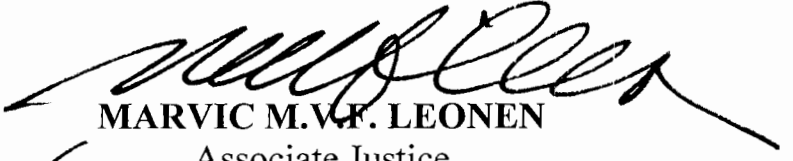
<sup>24</sup> The Guidelines for Receiving and Publication of Rules and Regulations Filed with the UP Law Center provide:

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

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

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

ACCORDINGLY, I concur in the result.



**MARVIC M.V.F. LEONEN**  
Associate Justice