THIRD DIVISION

G.R. No. 224521 — BISHOP SHINJI AMARI OF ABIKO BAPTIST CHURCH, represented by SHINJI AMARI, and MISSIONARY BAPTIST INSTITUTE & SEMINARY, represented by Director JOEL P. NEPOMUCENO, *petitioners* v. RICARDO VILLAFLOR, JR., *respondent.*

Promulgated:
February 17, 2020

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SEPARATE CONCURRING OPINION

LEONEN, *J.*:

I concur in the result of the *ponencia* written by Justice Alexander G. Gesmundo. The exclusion of respondent Ricardo Villaflor (Villaflor), Jr. as a member of Abiko Baptist Church in Japan is an ecclesiastical affair and is, therefore, beyond the ambit of this Court's jurisdiction to resolve. However, I am of the view that his removal as a missionary was likewise ecclesiastical in nature, having been done in the exercise of Abiko Baptist Church's right to select and control who to minister its faithful.

As discussed in the *ponencia*, an ecclesiastical affair is "one that concerns doctrine, creed or form or worship of the church, or the adoption and enforcement within a religious association of needful laws and regulations for the government of the membership, and the power of excluding from such associations those deemed unworthy of membership."[1] All that has no relation with the practice of faith, worship, or doctrine is considered secular.[2]

Determining whether a controversy involves an ecclesiastical affair or a secular matter is, in turn, essential in determining whether civil courts may take cognizance of it. If the controversy involves an ecclesiastical affair, civil courts must yield to the decision of the ecclesiastical tribunal, in deference to two key provisions of the Constitution. In Article II, Section 6, the Constitution declares that "[t]he separation of Church and State shall be inviolable." The Bill of Rights in Article III, Section 5 provides for the non-establishment and free exercise clauses, thus:

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1 *Ponencia*, p. 5, *citing Austria v. National Labor Relations Commission*, 371 Phil. 340, 353 (1999) [Per J. Kapunan, First Division].

2 Id.

ARTICLE III
Bill of Rights

> Section 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

Under Article III, Section 5, it is the State's duty to respect the free exercise of any religious faith. The State is likewise forbidden from establishing, endorsing, or favoring any religion, in contrast with the Spanish crown which established a national religion during the colonial period. Strictly reading Article III, Section 5 ensures the inviolability of the separation of Church and State, which separation is notably unqualified and should therefore be absolute.

The exclusion of Villaflor from membership in Abiko Baptist Church is clearly ecclesiastical in nature. It involves "the relationship between the church and its members and relates to matters of. . . worship and governance of the congregation."[3] The free exercise clause, in as much as it guarantees the right of individuals to freely exercise any religion of their own choosing, equally guarantees the right of religious institutions to determine who may personify their doctrines and beliefs.

However, I am of the opinion that the removal of Villaflor as missionary/minister was not purely secular; rather, it was an ecclesiastical decision. It is true that employer-employee relationships are covered by the Labor Code, and that a religious institution like Abiko Baptist Church may form employer-employee relationships.

Still, more than an employment decision, removing a missionary/minister inevitably involves the governance of a religious congregation. Being a minister is a position of leadership in the church, involving the teaching of religious doctrine to the faithful. Mission work requires evangelizing non-believers, equally involving matters of religious doctrine and worship. Necessarily, employment decisions of churches with respect to their ministers are ecclesiastical in nature. The State cannot compel a church to reinstate a minister that it has decided to remove, for not only will it inevitably and excessively entangle itself with matters of religion, it will be effectively dictating to a religious institution who its officials should be.

I am aware of this Court's decision in *Austria v. National Labor Relations Commission*.[4] In that case, Dionisio V. Austria (Austria) served, first, as a literature evangelist; then, as an Assistant Publishing Director before

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[3] Id.

[4] 371 Phil. 340 (1999) [Per J. Kapunan, En Banc].

becoming a pastor in Central Philippine Union Mission Corporation of the Seventh-Day Adventists. He served the Seventh-Day Adventists for 28 years until his services were terminated for failing to account for church tithes and offerings collected by his wife. This caused Austria to file an illegal dismissal complaint, and the Labor Arbiter ruled in his favor and ordered his reinstatement. Reversing the Labor Arbiter, the National Labor Relations Commission dismissed the complaint for lack of jurisdiction.[5]

Austria, who appealed before this Court, and the Office of the Solicitor General, while appearing for the National Labor Relations Commission, interestingly argued that the Commission wrongly dismissed Austria's illegal dismissal complaint. According to the Office of the Solicitor General, the validity of the termination of Austria's employment was a controversy within the National Labor Relations Commission's jurisdiction, as it was secular in nature.[6]

This Court agreed with the Office of the Solicitor General, holding that the "principle of separation of church and state finds no application in [the] case."[7] It found that "the matter of terminating an employee"[8] is "purely secular in nature"[9] and does not involve "the practice of faith, worship or doctrines of the church,"[10] matters traditionally regarded as ecclesiastical affairs. The Labor Code, said the Court, is "comprehensive enough to include religious corporations"[11] such as the Central Philippine Union Mission Corporation of the Seventh-Day Adventists. The Court found that the Seventh-Day Adventists failed to prove that Austria pocketed tithes and offerings from its faithful; hence, Austria was deemed illegally dismissed. The Seventh-Day Adventists was thus ordered to reinstate Austria to his former position as pastor and to even pay him backwages, among others.[12]

In my view, *Austria* too conveniently disposed of an important constitutional issue by framing the case as a labor dispute. *Austria* involved a pastor removed by his church. He then appealed his dismissal to the secular courts, praying that his church be ordered to reinstate him. The principle of separation of Church and State was certainly applicable, if not central, in *Austria*.

The very controversy that the religion clauses bar secular courts from resolving is whether or not a church followed its internal procedure for removing its pastors, ministers, and all those of equivalent authority. Taking cognizance of such cases will directly violate the separation of Church and

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5 Id. at 347–350.
6 Id. at 352.
7 Id.
8 Id. at 353.
9 Id. at 354.
10 Id. at 353.
11 Id. at 354.
12 Id. at 362.

State. If secular courts are to reverse the decision of the ecclesiastical tribunal, it will be infringing on a church's freedom to choose who its religious leaders should be. If the State orders a church to retain a dismissed minister, it will be interfering with ecclesiastical affairs.

Distinguishing between an ecclesiastical affair and a secular matter is theoretically and conceptually understandable. In actuality, however, employment disputes between churches and their ministers will necessarily involve matters traditionally regarded as secular. As a leadership position, being a minister will involve administrative functions such as handling of church funds as well as managing personnel. The approach taken by the Court in *Austria* avoids the reality that the duties of a minister cannot be purely ecclesiastical.

While not controlling in this jurisdiction, *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission*[13] is notable for introducing the concept of "ministerial exception." Under this concept, secular courts are barred from taking cognizance of employment controversies between churches and their ministers on the basis of the First Amendment.

Hosanna-Tabor Evangelical Lutheran Church and School employed Cheryl Perich (Perich) as one of its "called teachers." "Called" teachers, as opposed to "lay" ones, had to undergo a "colloquy" program at a Lutheran college or university. "Called" teachers were required to take courses in theology, in addition to the endorsement of their local Synod district and an oral examination.[14] It took six (6) years for Perich to finish the program.[15]

Into her fifth year of teaching in Hosanna-Tabor, Perich developed narcolepsy, which required her to take a one-year disability leave. When she notified the school of her return, the school replied that it had already contracted a "lay" teacher, one who need not undergo the "colloquy" program or to even be Lutheran, to teach in her place. Perich insisted on returning and to not resign, informing the school that she had already sought legal counsel and would be asserting her rights. This led the local Synod to rescind Perich's "call," and her employment was terminated for "insubordination and disruptive behavior."[16]

Perich filed a charge before the Equal Employment Opportunity Commission, claiming that she was discriminated on the ground of disability. The Equal Employment Opportunity Commission agreed and sued Hosanna-

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13 132 S. Ct. 694 (2012) [Per C.J. Roberts, United States Supreme Court].

14 Opinion of the United States Supreme Court in *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission*, p. 2. Available at <https://www.supremecourt.gov/opinions/11pdf/10-553.pdf>. (Last accessed on February 11, 2020).

15 Id. at 16.

16 Id. at 3–4.

Tabor before the district court. It prayed that Perich be reinstated to her former position.[17]

Hosanna-Tabor moved for summary judgment and argued that the First Amendment barred the suit filed by the Equal Employment Opportunity Commission. According to Hosanna-Tabor, it fired Perich for a religious reason given that her threat to sue the church was contrary to the Christian teaching of resolving disputes internally.[18]

The District Court granted summary judgment and dismissed the complaint, agreeing with Hosanna-Tabor that the suit was barred by the First Amendment. It held that allowing the suit would infringe upon the religious freedom of Hosanna-Tabor to choose those who could teach Lutheran doctrine in its school. Reversing the District Court, the Court of Appeals for the Sixth Circuit remanded the case. While recognizing that the First Amendment barred suits filed by ministers whose employment were terminated by their churches, the Court of Appeals held that the "ministerial exception" did not apply considering that Perich was not a minister.[19]

The United States Supreme Court disagreed with the Court of Appeals and held that the "ministerial exception" applied in the case. First, it discussed the history and development of the religion clauses and how they were formulated to primarily bar the Federal Government from meddling with ecclesiastical affairs, unlike the English Crown which established a national church and at times imposed its preferences as to the religious officers to be appointed. Specifically on the non-establishment clause, its purpose is to "[prevent] the Government from appointing ministers."[20] As for the free exercise clause, it "prevents [the Government] from interfering with the freedom of religious groups to select their own."[21]

It had yet to decide a case involving government interference with the employment choices of religious groups, so the United States Supreme Court, instead, discussed cases involving disputes over church properties and found that it usually declined jurisdiction by virtue of the First Amendment. *Hosanna-Tabor*, decided in 2012, was the first case where it had to squarely resolve the issue of whether or not secular courts may resolve employment discrimination suits filed by ministers against the religious institutions that employed them. On this issue, the United States Supreme Court said that secular courts have no such jurisdiction, citing the "ministerial exception" anchored on the First Amendment. Essentially, the ministerial exception bars suits involving "the employment relationship between a religious institution and its ministers," because taking cognizance of such cases infringes on the

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17 Id. at 4–5.
18 Id. at 5.
19 Id.
20 Id. at 9.
21 Id.

right of religious organizations to choose who to personify and teach their beliefs. In *Hosanna-Tabor*:

> The members of a religious group put their faith in the hands of their ministers. Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs. By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments. According the state the power to determine which individuals will minister to the faithful also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions.[22]

The purpose of the "ministerial exception" is not to determine whether the dismissal was indeed done on religious grounds, but to ensure that the decision to dismiss the minister exclusively belongs to the religious institution. It is "not to safeguard a church's decision to fire a minister only when it is made for a religious reason. The exception instead ensures that the authority to select and control who will minister to the faithful—a matter 'strictly ecclesiastical'—is the church's alone."[23]

The United States Supreme Court conceded that Perich was not a minister. Nevertheless, Hosanna-Tabor held her out as one, especially since being a "called" teacher required a significant amount of religious training and even a formal process of commissioning. Even Perich held herself out as a minister, accepting tax concessions available to employees earning compensation "in the exercise of the ministry." After she was terminated, she wrote the Synod and said that "I feel that God is leading me to serve in the teaching ministry. . . I am anxious to be in the teaching ministry again soon."[24]

Moreover, like a minister, she taught religion in Hosanna Tabor, "reflecting a role in conveying the Church's message and carrying out its mission."[25] Her duties included "lead[ing] others toward Christian maturity"[26] and "teach[ing] faithfully the Word of God, the Sacred Scriptures, in its truth and purity and as set forth in all the symbolical books of the Evangelical Lutheran Church."[27] Ultimately, the decision of the Court of Appeals was reversed, and the summary dismissal of Perich's employment discrimination case was upheld. *Hosanna-Tabor* concludes with:

> The interest of society in the enforcement of employment discrimination statutes is undoubtedly important. But so too is the interest

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22 Id. at 13–14.
23 Id. at 20.
24 Id. at 17.
25 Id.
26 Id.
27 Id.

> of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission. When a minister who has been fired sues her church alleging that her termination was discriminatory, the First Amendment has struck the balance for us. The church must be free to choose those who will guide it on its way.[28]

The right to work is imbued with public interest, so much that the Constitution affords full protection to labor.[29] Employer-employee relations between religious institutions and their ministers, however, will involve matters inherently religious in nature. Considering that the Constitution prohibits the State from entangling itself in religious disputes, resolving the issue of who to employ as ministers and who to personify their beliefs is best left to religious institutions. After all, in ministry and missionary work, the right to wage should only be incidental.

All told, Villaflor's exclusion as a member of Abiko Baptist Church *and* his removal as minister are matters ecclesiastical in nature. These matters are outside the jurisdiction of secular courts, including this Court.

IN VIEW OF THE FOREGOING, I vote to **GRANT** the Petition for Review on Certiorari and **REVERSE** and **SET ASIDE** the Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 08067. The Decision of the National Labor Relations Commission dismissing the illegal dismissal complaint filed by respondent Ricardo Villaflor, Jr. for lack of jurisdiction must be **REINSTATED**.

MARVIC M.V.F. LEONEN
Associate Justice

CERTIFIED TRUE COPY

MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division
JUL 15 2020

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28 Id. at 21–22.

29 CONST., Art. XIII, sec. 3 partly provides:
Section 3. 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.