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that the offense was his first in his more than 10 years of government service, and that he acknowledged and exhibited remorse for his infractions and restituted the amount involved.[3] As the Court observed there, where a penalty less severe would suffice, whatever missteps had been committed by the employee ought not to be visited with a consequence as severe as dismissal.[4]

In the matter of the *Report on the Financial Audit on the Books of Accounts of Mr. Delfin T. Polido, Former Clerk of Court of Municipal Circuit Trial Court, Victoria-La Paz, Tarlac,*[5] respondent judge was **fined** ₱10,000.00 for a shortage of ₱38,000.00 in the judiciary fund. Respondent judge later restituted the shortage.

IN VIEW OF THE FOREGOING CIRCUMSTANCES, I respectfully submit that dismissal from the service is a penalty too severe for respondent Judge. Instead, I **VOTE** that he should suffer **suspension from office without pay for two years**.

EN BANC

[G.R. No. 194192. June 16, 2015]

DAVAO CITY WATER DISTRICT REPRESENTED BY ITS GENERAL MANAGER, RODORA N. GAMBOA, *petitioner, vs.* **RODRIGO L. ARANJUEZ, GREGORIO S. CAGULA, CELESTINO A. BONDOC, DANILO L. BUHAY, PEDRO E. ALCALA, JOSEPH A. VALDEZ, TITO V. SABANGAN, MARCELINO**

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[3] *Id*. at 547.

[4] *Id*.

[5] A.M. No. 05-11-320-MCTC, February 17, 2006, 482 SCRA 571, 577.

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B. ANINO, JUANITO C. PANSACALA, JOEMARIE B. ALBA, ANTERO M. YMAS, ROLANDO L. LARGO, RENEBOY U. ESTEBAN, MANUEL B. LIBANG, ROMEORICO A. LLANOS, ARTHUR C. BACHILLER, SOCRATES V. CORCUERA, ALEJANDRO C. PICHON, GRACIANO A. MONCADA, ROLANDO K. ESCORIAL, NOEL A. DAGALE, EMILIO S. MOLINA, SHERWIN S. SOLAMO, FULGENCIO I. DYGUAZO, GUALBERTO S. PAGATPAT, JOSEPH B. ARTAJO, FELIXBERTO Q. OBENZA, FLORANTE A. FERRAREN, ELSA A. ELORDE, CARLOS P. MORRE, JAMES AQUILINO M. COLOMA, JOAQUIN O. CADORNA, JR., LORNA M. MAXINO, ROMULO A. REYES, NOEL G. LEGASPI, ELEANOR R. LAMOSTE, WELMER E. CRASCO, DELIO T. OLAER, VICENTE R. MASUCOL, IRENEO A. CUBAL, EDWIN A. DELA PEÑA, JIMMY A. TROCIO, WILFREDO L. TORREON, ALEJANDRITO M. ALO, RAUL S. SAGA, JOSELITO P. RICONALLA, TRISEBAL Q. AGUILAR, ARMAN N. LORENZO, SR. and PEDRO C. GUNTING, *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; CIVIL SERVICE COMMISSION (CSC); UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (CSC RESOLUTION NO. 991936); A MORE RELEVANT CONSIDERATION OF PUBLIC INTEREST IS ACCORDED WHENEVER THE MERITS OF A CASE COLLIDE WITH RIGID APPLICATION OF THE RULES; SUSTAINED.— Though the appeal before the CSC lacked a notice of appeal as required by CSC Resolution No. 991936 or the Uniform Rules on Administrative Cases in the Civil Service (URACCS), the Consolidated Memorandum filed by the private respondents was enough to be considered as a sufficient compliance with the rules. The Memorandum delineates the errors asserted

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against DCWD and the discussions supporting their arguments. We find merit in the sufficiency of the Memorandum rather than strict compliance in view of the constitutional right of every employee to security of tenure. A more relevant consideration of public interest is accorded whenever the merits of a case collide with rigid application of the rules. x x x In *Republic of the Philippines v. Court of Appeals*, this Court pronounced that technical rules of procedure are not ends in themselves but primarily devised and designed to help in the proper and expedient dispensation of justice. In appropriate cases, therefore, the rules may have to be so construed liberally as to meet and advance the cause of substantial justice. While it is desirable that the rules of procedure are faithfully and even meticulously observed, courts should not be so strict about procedural lapses that do not really impair the proper administration of justice. If the rules are intended to ensure the orderly conduct of litigation, it is because of the higher objective they seek which is the protection of substantive rights of the parties. Substantial justice, in other words must prevail.

2. ID.; ID.; ID.; CSC RESOLUTION NO. 021316; WITHOUT THE INTENT AT WORK STOPPAGE OR SERVICE DISRUPTION, THE CONCERTED ACTIVITY IS NOT PROHIBITED; RATIONALE.— [A] prohibited concerted mass action is defined not in Sec. 6 of Resolution No. 021316 but in Sec. 5 thereof. x x x The operative phrases are "any collective activity" and "work stoppage or service disruption." Without the intent at work stoppage or service disruption, the concerted activity is not prohibited. The time and place of the activity are not determinative of the prohibition. Whether done within government hours, a concerted activity is allowed if it is without any intent at work stoppage. We cannot isolate the provision of Section 6 of the Resolution from definition of prohibited activity in Section 5 thereof. It is erroneous to interpret the provisions in such a way that an act not within the circumstances as defined under Section 5 can still be regarded as prohibited if done within government hours. To subscribe to the argument of DCWD would in effect expand the definition provided by Resolution No. 021316 on what constitutes a prohibited mass action. It is clear that the collective activity of joining the fun run in t-shirts with inscriptions on CNA incentives was not to effect work stoppage or disrupt the service. x x x More importantly we need

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to refer to *GSIS v. Villaviza (GSIS case)*. It was there ruled that the acts of GSIS employees wearing similarly colored shirts while attending a public hearing inside the GSIS Office, with clenching of fists and orating against the then President Winston Garcia, were not constitutive of a prohibited activity but were only an exercise of their constitutional freedom of expression.

3. ID.; ID.; ID.; A CITIZEN WHO ACCEPTS PUBLIC EMPLOYMENT MUST ACCEPT LIMITATIONS ON HIS FREEDOM BUT THERE ARE SOME RIGHTS AND FREEDOM SO FUNDAMENTAL TO LIBERTY THAT THEY CANNOT BE BARGAINED AWAY IN A CONTRACT FOR PUBLIC SERVICE; EXEMPLIFIED.— CSC issued MC No. 33 in recognition of the rights of the government employees to air their grievances balanced by the delivery of services to the public which should not be prejudiced. MC No. 33 sets down rules governing the posting of posters and other similar materials within the premises of government agencies. x x x Pursuant to this mandate, the former General Manager of DCWD issued an office memorandum designating the bulletin board at the motorpool area below the Office of the Purchasing Division and the side of the office building beside the guard house where the bundy clock is located as the designated areas for posting of grievances. Clearly, the DCWD Office Memorandum hews close and faithfully to MC No. 33. It is a reasonable rule issued by the heads of the agencies in order to regulate posting of grievances of the employees. 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. x x x In simple paraphrase we say, regulation of the freedom of expression is not removal of the constitutional right.

4. ID.; ID.; ID.; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (CSC RESOLUTION NO. 991936);

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VIOLATION OF REASONABLE OFFICE RULES AND REGULATIONS; IMPOSABLE PENALTY, EXPLAINED.— Under Section 52 (C) (3), Rule IV of Resolution No. 991936, violation of reasonable office rules and regulations is punishable with reprimand on the first offense and suspension ranging from one to thirty days for the second offense. x x x Thus, in line with the civil service rules and jurisprudence, we conclude that a violation of an office memorandum, which was issued as an internal rule to regulate the area for posting of grievances inside the office premise, is only a light offense punishable by reprimand. Rules and regulations are issued to attain harmony, smooth operation, maximize efficiency and productivity, with the ultimate objective of realizing the functions of particular offices and agencies of the government.

5. ID.; ID.; ID.; ID.; ID.; PENALTIES; IF THE IMPOSED SUSPENSION EXCEEDS THIRTY DAYS OR THE FINE IMPOSED IS IN AN AMOUNT OVER THIRTY-DAY SALARY, THE DECISION WILL ONLY ATTAIN FINALITY AFTER THE LAPSE OF THE REGLEMENTARY PERIOD IN THE ABSENCE OF ANY MOTION FOR RECONSIDERATION OR APPEAL.— On the submissions that the decisions of a government agency, acting as Disciplining Authority, are immediately executory upon receipt thereof, we need merely cite Section 37 of the Resolution No. 991936 x x x As distinguished by the law, if the imposed suspension exceeds thirty days or the fine imposed is in an amount over thirty-day salary, the decision will only attain finality after the lapse of the reglementary period in the absence of any motion for reconsideration or appeal. Penalties within the 30-day threshold are immediately executory penalties. In this case, the members and officials, except the casual employees who were not meted with penalty as the renewal of their employment was held in abeyance, were sanctioned with penalties ranging from suspension of work from one (1) month and one (1) day to dismissal from service. Evidently, the finality and execution of the judgment did not take place after the lapse of the reglementary period because as previously discussed, the members and officials were able to file their consolidated appeal in lieu of notice of appeal.

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LEONEN, *J.*, *concurring opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; FREEDOM OF EXPRESSION; 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; RATIONALE.— 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. x x x The constitutional right to freedom of expression belongs to all. But its exercise may be reasonably regulated.

2. ID.; ID.; ID.; 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; SUSTAINED.—

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Alliance of Government Workers v. Minister of Labor 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 that provided by law and regulation." Laws that allow employees of agencies discharging proprietary functions to engage in strikes or other concerted activities belong to the past. x x x 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." x x x 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.

3. ID.; ID.; ID.; THOSE WHO CHOSE PUBLIC SERVICE EMBRACED THE PUBLIC'S INTEREST WITH A PRIORITY HIGHER THAN THEIR OWN.— Traditional classifications distinguish between those that perform governmental or sovereign functions and those that exercise proprietary functions. The Bases Conversion and Development Authority, for example, exercises proprietary functions. *Shipside Inc. v. Court of Appeals* discusses how the Bases Conversion and Development Authority has a separate and distinct personality from the government: x x x 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. x x x 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. x x x 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." 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. 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.

JARDELEZA, *J., concurring and dissenting opinion*:

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; QUESTIONS OF FACT ARE NOT REVIEWABLE IN PETITIONS FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; EXCEPTIONS; PRESENT IN CASE AT BAR.— Questions of fact are not reviewable in petitions for review under Rule 45 of the Rules of Court because the Court is not a trier of facts. However, there are exceptions to this rule, which are present in this case, among them, the lack of sufficient support in evidence of the lower courts' judgment and when the conclusion arrived upon by the lower courts are based on speculation, surmises and conjectures. Furthermore, although DCWD did not raise in its petition this factual issue, Section 8, Rule 51 of the Rules of Court and jurisprudence permit us to review matters not assigned as errors on appeal, provided, among others, that consideration of the error is necessary in arriving at a just decision and a complete resolution of the case, or the error is closely related to an error assigned.

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2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR RELATIONS; STRIKES; LIABILITY FOR UNLAWFUL OR PROHIBITED ACTS COMMITTED IN A STRIKE OR OTHER MASS ACTION IS LEGALLY DETERMINED INDIVIDUALLY, NOT COLLECTIVELY; EXPLAINED.— Liability for unlawful or prohibited acts committed in a strike or other concerted mass action is legally determined ***individually***, not collectively. Article 277 of the Labor Code does not hold the officers of a union responsible for an illegal act of another officer: x x x A strike or mass action which is legal does not become illegal merely because it is tainted by prohibited acts. Here, there was no prohibited mass action, and thus the union officers who wore shirts with the inscription were not held liable. Further, the alleged prohibited act of posting is not proven. A reprimand is a public and formal censure or severe reproof administered to a person at fault by his superior officer or a body to which he belongs. Although a reprimand may be a slight form of penalty, it still goes into the record of the employee. It is unjust to impose even the slightest form of penalty to an employee, whether or not in the government, where the alleged infraction is not proven with substantial evidence.

APPEARANCES OF COUNSEL

Richard D. Tumanda and *Bernardo D. De Lima, Jr.,* for petitioner.

Philip S. Pantojan for respondents.

R E S O L U T I O N

PEREZ, *J.*:

This is a Petition for Review on *Certiorari*[1] of the Decision[2] of the Twenty Third Division of the Court of Appeals in CA-G.R. SP No. 02793-MIN dated 7 October 2010, affirming the

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[1] Rule on Civil Procedure, Rule 45.

[2] Penned by Associate Justice Rodrigo F. Lim, Jr. with Associate Justices Angelita A. Gacutan and Nina G. Antonio-Valenzuela, concurring; CA *rollo*, pp. 774-791.

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14 January 2009 Resolution No. 09-0047 rendered by the Civil Service Commission (CSC).

The Facts

Petitioner Davao City Water District (DCWD) is a government-owned and controlled corporation in Davao City represented by its General Manager Engr. Rodora N. Gamboa (GM Gamboa).

The private respondents, namely, Rodrigo L. Aranjuez, Gregorio S. Cagula, Celestino A. Bondoc, Danilo L. Buhay, Pedro E. Alcala, Joseph A. Valdez, Tito V. Sabangan, Marcelino B. Anino, Juanito C. Pansacala, Joemarie B. Alba, Antero M. Ymas, Rolando L. Largo, Reneboy U. Esteban, Manuel B. Libang, Romeorico A. Llanos, Arthur C. Bachiller, Socrates V. Corcuera, Alejandro C. Pichon, Graciano A. Moncada, Rolando K. Escorial, Noel A. Dagale, Emilio S. Molina, Sherwin S. Solamo, Fulgencio I. Dyguazo, Gualberto S. Pagatpat, Joseph B. Artajo, Felixberto Q. Obenza, Florante A. Ferraren, Elsa A. Elorde, Carlos P. Morre, James Aquilino M. Coloma, Joaquin O. Cadorna, Jr., Lorna M. Maxino, Romulo A. Reyes, Noel G. Legaspi, Eleanor R. Lamoste, Welmer E. Crasco, Delio T. Olaer, Vicente R. Masucol, Ireneo A. Cubal, Edwin A. dela Peña, Jimmy A. Trocio, Wilfredo L. Torreon, Alejandrito M. Alo, Raul S. Saga, Joselito P. Riconalla, Trisebal Q. Aguilar, Arman N. Lorenzo, Sr. and Pedro C. Gunting (Aranjuez, *et al.*) are officers and members of *Nagkahiusang Mamumuo sa* Davao City Water District (NAMADACWAD). They were charged with several administrative cases due to acts committed during the anniversary celebration of DCWD such as wearing of t-shirts with inscriptions and posting of bond papers outside the designated places. The inscriptions and postings bore employees' grievances.

The records show that as early as 16 May 2007, the members and officers of NAMADACWAD have been staging pickets in front of the DCWD Office during their lunch breaks to air their grievances about the non-payment of their Collective Negotiation Agreement (CNA) incentives and their opposition to DCWD's privatization and proposed One Hundred Million Peso Loan.

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On 31 October 2007, GM Gamboa issued an Office Memorandum addressed to all department managers concerning the different activities that would take place during DCWD's then upcoming anniversary celebration. The Memorandum reads:

> Please be informed that the opening activities of our 34th anniversary this coming 09 November 2007 are the motorcade and the fun run. The assembly area will be at the Victoria Plaza Mall parking, in front of Cynthia's Lechon Hauz, 6:00 o'clock in the morning.
>
> In view of this, everybody is expected to be there except only those who are assigned as a skeletal force. All carpool vehicles are also enjoined to proceed at the said area. The participants are free to wear any sports attire. Further, you are advised to sign in the attendance sheet provided by the HRD.[3]

On 8 November 2007, the officers and members of NAMADACWAD held an Emergency General Assembly and they agreed to wear NAMADACWAD t-shirts with inscriptions stating, "CNA Incentive *Ihatag Na, Dir. Braganza Pahawa Na!*" on the day of the anniversary.[4]

Came the anniversary, officers and members sported t-shirts with inscriptions "CNA Incentive *Ihatag Na, Dir. Braganza Pahawa Na!*" at the beginning of the Fun Run at Victoria Plaza at around 6:30 in the morning and continued to wear the same inside the premises of the DCWD office during the office hours. Also, one of the members of the Board of Directors of NAMADACWAD Gregorio S. Cagula (Cagula), with the help of some of its members, attached similar inscriptions and posters of employees' grievances to a post in the motor pool area, an area not among the officially designated places[5] for posting of grievances as prescribed by DCWD's Office Memorandum[6]

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[3] CA *rollo*, p. 118.

[4] *Id*. at 119.

[5] The designated places pursuant to Office Memorandum dated February 8, 1996 are: (1) The bulletin board at the motor pool area below the Office of the Purchasing Division and (2) the side of the office building beside the guardhouse where the bundy clock is located; *id*. at 29, 782.

[6] *Id*.

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dated 8 February 1996 and pursuant to CSC Memorandum Circular No. 33,[7] Series of 1994 (MC No. 33).[8]

As a consequence of their actions, GM Gamboa sent a Memorandum dated 14 November 2007 addressed to the officers and members of NAMADACWAD, requiring them to explain the reasons for the attire they wore during the anniversary celebration. Through a collective letter dated 19 November 2007, the officers and members explained that the Memorandum only required the employees to wear any sports attire, though theirs were with additional inscriptions containing grievances. They countered that the inscriptions were but manifestations of their constitutional rights of free speech and freedom of expression.[9]

On 23 November 2007, another Memorandum was sent to the officers of NAMADACWAD requiring them to explain within 72-hours why they should not be held liable for the actions committed by Cagula.[10]

Finding *prima facie* case against them, GM Gamboa filed formal charges against the officers and members of NAMADACWAD as follow:

1. For DCWD Administrative Case No. 34-2007 against the officials of NAMADACWAD for violation of Existing Civil Service Law and Rules of Serious Nature defined under Section 46 [12], Book V of Executive Order No. 292,[11] in relation to Rule IV, Section 52 B [4]

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[7] *Rules to Govern Posting and Hanging Posters, Placards, Streamers and Other Similar Materials*; *id*. at 29-30.

[8] *Id*. at 170.

[9] Letter Explanation to the Memorandum; *id*. at 120.

[10] *Id*. at 160.

[11] **Section 46.** Discipline: General Provisions.—(a) No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process.

(b) The following shall be grounds for disciplinary action:

(12) Violation of existing Civil Service Law and rules or reasonable office regulations;

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of the Civil Service Resolution No. 991936[12] dated August 31, 1999 and Civil Service Resolution No. 021316[13] dated October 11, 2002 and MC No. 33 dated October 21, 1994.[14]

2. For DCWD Administrative Case Nos. 11-2007 to 33-2007 and 35-2007 to 44-2007 involving the individual members of NAMADACWAD for violation of Existing Civil Service Law and Rules of Serious Nature defined under Section 46 [12], Book V of Executive Order No. 292,[15] in relation to Rule IV, Section 52 B [4] of the Civil Service Resolution No. 991936 dated August 31, 1999 and Civil Service Resolution No. 021316 dated October 11, 2002.

After giving those concerned the opportunity to explain through several hearings and submission of additional evidence, the Hearing Committee, through the authority given by DCWD to hear the administrative charges, filed on 14 March 2008 its Consolidated Resolution and Recommendation finding the officers and members of the NAMADACWAD guilty as charged with penalties ranging from suspension to dismissal from service with all accessory penalties under the CSC Law and Rules.[16]

On 19 March 2008, GM Gamboa issued several Orders[17] adopting the recommendation submitted by the Hearing Committee but modifying some of the corresponding penalties in view of

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[12] B. The following are *less grave offenses* with the corresponding penalties:

4. Violation of existing Civil Service Law and rules of serious nature
1st offense — Suspension from 1 mo. 1 day to 6 mos.
2nd offense — Dismissal

[13] Omnibus Rules on Prohibited Concerted Mass Actions in the Public Sector.

[14] CA *rollo*, pp. 144-145.

[15] Book V/Title I/Subtitle A/Chapter 7-Discipline.

[16] CA *rollo*, pp. 144-180.

[17] *Id*. at 181-207.

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mitigating circumstances such as *first infraction* and *substantial justice*. However, three officials namely Rodrigo L. Aranjuez, Cagula and Celestino A. Bondoc were penalized with dismissal from the service for the reason that the infraction was the second administrative offense of serious nature.[18]

Aggrieved, Aranjuez, *et al*., filed an Urgent Motion for Reconsideration[19] with Prayer to Suspend the Immediate Execution of the Orders dated 19 March 2008. The Motion for Reconsideration was thereafter submitted for resolution after the Hearing Committee waived the filing of a Comment. On 17 April 2008, the Motion was denied by DCWD.

On 2 May 2008, Aranjuez, *et al*., filed an appeal before the CSC bringing up, among other issues, the violation of their constitutional rights to assemble and petition for redress of grievances.[20]

In its Comment, DCWD defended the Orders on the basis of Section 6 of CSC Resolution No. 021316[21] which provides that the concerted activity like the participation of the officers and employees during the fun run wearing t-shirts with inscriptions was prohibited because it was done during office hours. Moreover, the act of Cagula in posting papers with grievances outside the designated areas was a clear violation of MC No. 33 in relation to 8 February 1996 Office Memorandum. It was submitted that due to Cagula's membership in the Board of Directors of NAMADACWAD, the other officers were solidarily responsible for his actions.[22]

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[18] *Id*. at 204.

[19] *Id*. at 212-217.

[20] *Id*. at 63-114.

[21] **Section 6.** ***Permissible Concerted Mass Action*****.** – A concerted activity or mass action done outside of government office hours shall not be deemed a prohibited concerted activity or mass action within the contemplation of this omnibus rules provided the same shall not occasion or result in the disruption of work or service.

[22] CA *rollo*, pp. 363-394.

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CSC Resolution

On 14 January 2009, CSC issued a Resolution[23] partly granting the consolidated appeal and held that the collective act of respondents in wearing t-shirts with grievance inscriptions during office hours was not within the ambit of the definition of prohibited mass action punishable under CSC Resolution 021316 since there was no intent to cause work stoppage. However, though not prohibited under the Resolution, the act was considered as an offense punishable under "Violation of Reasonable Office Rules and Regulations." CSC further ruled that Cagula's act of posting of grievances outside the designated areas was a clear violation of MC No. 33. By reason of Cagula's position, the other officers of NAMADACWAD were considered as having agreed and conspired to commit the said act and as such are as liable as Cagula.

On the other hand, and contrary to the assertions of DCWD, the violations committed by the private respondents are not serious in nature due to the lack of any abusive, vulgar, defamatory or libelous language. The dispositive portion reads:

WHEREFORE, the Consolidated Appeal filed by Rodrigo L. Aranjuez, et al. is PARTLY GRANTED. The Orders dated March 19, 2008 issued by the General Manager Rodora N. Gamboa finding appellants guilty of Violation of Existing Civil Service Law and Rules of Serious Nature (Section 46 [12] Book V of Executive Order No. 292, in relation to Rule IV, Section 52 B [4] of the CSC Resolution No. 991936 dated August 31, 1999 and CSC Resolution No. 021316 dated October 11, 2002 and CSC MC No. 33 dated October 21, 1994), are hereby MODIFIED. Accordingly, appellants are hereby found liable for Violation of Reasonable Office Rules and Regulations and are meted the following penalties, to wit:

1. As to members Danilo Buhay, Pedro E. Alcala, Joseph A. Valdez, Tito V. Sabangan, Marcelino B. Anino, Juanito C. Pansacala, Joemarie B. Alba, Antero M. Ymas, Rolando L. Largo, Reneboy U. Esteban, Manuel B. Libang, Romeorico A. Llanos, Arthur C. Bachiller, Socrates V. Corcuera, Alejandro C. Pichon, Graciano A. Moncada, Rolando Escorial, Noel A. Dagale, Emilio S. Molina,

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[23] *Id*. at 464-482.

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Sherwin S. Solano, Danilo L. Buhay and Fulgencio I. Dyguazo, the penalty of reprimand;

2. As to officers Gualberta S. Pagatpat, Joseph A. Artalo, Felixberto Q. Obenza, Florante A. Ferraren, Elsa A. Ilorde, Carlos P. Morre, James Aquilino M. Coloma, Joacquin O. Cadorna, Jr., Lorna M. Maximo, Romulo A. Reyes, Noel G. Legazpi, Eleanor R. Lamoste, Welmer E. Crasco, Delio T. Olaer, Vicente R. Masucol, Ireneo Cubal, Rodrigo L. Aranjuez, Gregorio S. Cagula and Celestino A. Bondoc, the penalty of reprimand and strong warning that a repetition of the same shall be dealt with severely.

3. As to members Edwin A. dela Peña, Jummy A. Trocio, Wilfredo A. Torreon, Alejandrito M. Alo, Raul S. Saga, Joselito P. Riconalla, Trisebal Q. Aguilar, Arman L. Lorenzo, Sr. and Pedro C. Gunting, they are likewise found guilty of the offense of Violation of Reasonable Office Rules and Regulations but are not meted a penalty considering that they are casual employees whose renewal of appointments were held in abeyance.[24]

Aggrieved, DCWD filed a Petition for Review under Rules 43 before the Court of Appeals alleging procedural and substantive infirmities of the CSC Resolution.

The Court of Appeals' Decision

In its decision, the Court of Appeals affirmed *in toto*[25] the resolution of CSC.

The appellate court disagreed with the contention of DCWD that there was a violation of any provision of Resolution No. 021316 in this wise:

> As correctly observed by the *Civil Service Commission*, the act of respondents in sporting a t-shirt with the inscription "CNA INCENTIVE IHATAG NA, DIRECTOR BRAGANZA, PAHAWA NA!" during the fun run and even inside the office premises hardly qualifies as a prohibited concerted mass action under *CSC Resolution No. 021316.*

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[24] *Id.* at 481-482.

[25] **WHEREFORE,** premises considered, the Appeal is hereby **DENIED,** and the January 14, 2009 Resolution No. 09-0047 rendered by the Civil Service Commission is hereby **AFFIRMED** *in toto; id.* at 790.

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x x x x x x x x x

To say the least, Section 5 of Resolution No. 01316 provides a specific guideline as to what constitutes a prohibited concerted activity. A prohibited concerted activity must be one undertaken by government employees, by themselves or through their association, with the *intent* of effecting work stoppage or service disruption, in order to realize their demands or force concessions. In the case at hand, we can readily observe that respondent's participation in the fun run, as well as their behavior inside the premises of DCWD office during the regular working hours of that day indicate a complete absence of any intention on their part to effect a work stoppage or disturbance. In fact, as attested by both parties, all the respondents participated with the planned activities and festivities on that day.[26]

The appellate court was likewise in agreement with the CSC which considered as simple violation of office rules the posting of banners outside the designated posting areas by Cagula. Also like the CSC, it ruled that such offense is not punishable with the penalty of dismissal.

The DCWD is now before us still with its basic arguments, though rephrased:

I.

The *court a quo* failed to rule on the issue whether or not the respondents' Consolidated Appeal filed before the CSC was sufficient in form and substance.

II.

The *court a quo* erred in ruling that the concerted mass action on November 9, 2007 was not prohibited under Resolution No. 021316.

III.

The *court a quo* erred in ruling that Resolution No. 021316 and MC No. 33 are considered "reasonable office rules and regulations" within the purview of Section 52 C [3] of the Uniform Rules on Administrative Cases.

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[26] *Id*. at 785-786.

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IV.

The *court a quo* erred in ruling that respondents' act of posting white bond papers with union-related inscriptions on their t-shirts while inside the office premises does not constitute serious violation of Civil Service Rules but only a violation of Reasonable Office Rules and Regulations, despite the fact that the said Memorandum Circular No. 33 is a CSC-issued Memorandum and not DCWD-issued Rules.

V.

The *court a quo* erred in ruling that MC No. 33 was not violated by respondent Gregorio S. Cagula and the rest of the officials of NAMADACWAD who were charged in DCWD Administrative case No. 34-2007.

VI.

The *court a quo* erred in not taking into consideration that respondents Aranjuez, Cagula and Bondoc were second-time offenders who were previously charged and penalized for violation of MC No. 33, thereby justifying their dismissal from the service.

VII.

The *court a quo* erred when it failed to rule on the issue of whether the decisions of a government agency, acting as Disciplining Authority, in disciplinary cases are immediately executory upon receipt thereof.

The Court's Ruling

The Court finds no merit in the petition.

Prefatorily, DCWD contends that the appeal of Aranjuez, *et al.*, should have been dismissed by the CSC for non-compliance with Section 46 of CSC Resolution No. 991936, particularly their failure to file a notice of appeal, their failure to show proof of payment of the appeal fee and the petition's invalid verification and certification of non-forum shopping.

We are not persuaded.

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Though the appeal before the CSC lacked a notice of appeal as required by CSC Resolution No. 991936 or the Uniform Rules on Administrative Cases in the Civil Service (URACCS),[27] the Consolidated Memorandum filed by the private respondents was enough to be considered as a sufficient compliance with the rules. The Memorandum delineates the errors asserted against DCWD and the discussions supporting their arguments. We find merit in the sufficiency of the Memorandum rather than strict compliance in view of the constitutional right of every employee to security of tenure. A more relevant consideration of public interest is accorded whenever the merits of a case collide with rigid application of the rules.[28]

Further, we find that the Civil Service Commission, the agency directly concerned, the ruling of which was upheld by the Court of Appeals on review, correctly exercised jurisdiction over respondent's appeal from the decision of petitioner DCWD, thereby ruling against, if *sub silentio*, the argument of petitioner that the appeal should be dismissed for lack of proof of payment of appeal. The Civil Service Commission and the Court of Appeals considered the procedural issue raised by petitioner as a surmountable bar to the resolution of the main issue of

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[27] **Section 46**. *Perfection of an Appeal*. — To perfect an appeal, the appellant shall within fifteen (15) days from receipt of the decision submit the following:

a. Notice of appeal which shall specifically state the date of the decision appealed from and the date of receipt thereof;

b. Three (3) copies of appeal memorandum containing the grounds relied upon for the appeal, together with the certified true copy of the decision, resolution or order appealed from, and certified copies of the documents or evidence;

c. Proof of service of a copy of the appeal memorandum to the disciplining office;

d. Proof of payment of the appeal fee; and

e. A statement or certificate of non-forum shopping.

Failure to comply with any of the above requirements within the reglementary period shall be construed as failure to perfect an appeal and shall cause its dismissal.

[28] *Adalim v. Taniñas*, G.R. No. 198682, 10 April 2013, 695 SCRA 648, 656.

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respondents' constitutional right to free expression[29] as amplified with specificity by their guaranteed right as workers to peaceful concerted activity and their entitlement to security of tenure.[30] The decisions of the Civil Service Commission and the Court of Appeals are squarely supported by *Adalim v. Taniñas*[31] stating that:

> In a number of cases, we upheld the CSC's decision relaxing its procedural rules to render substantial justice. The Revised Rules on Administrative Cases in the Civil Service themselves provide that administrative investigations shall be conducted without strict recourse to the technical rules of procedure and evidence applicable to judicial proceedings. The case before the CSC involves the security of tenure of public employees protected by the Constitution. Public interest requires a resolution of the merits of the appeal instead of dismissing the same based on a rigid application of the CSC Rules of Procedure. Accordingly, both the CSC and the CA properly allowed respondent employees' appeal despite procedural lapses to resolve the issue on the merits.

In *Republic of the Philippines v. Court of Appeals*,[32] this Court pronounced that technical rules of procedure are not ends in themselves but primarily devised and designed to help

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[29] CONSTITUTION, Article III Bill of Rights, Section 4. No 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 the government for redress of grievances.

[30] CONSTITUTION, Article XIII SOCIAL JUSTICE AND HUMAN RIGHTS

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. It 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. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making process affecting their rights and benefits as may be provided by law.

[31] *Supra* note 28.

[32] 343 Phil. 428, 436 (1997).

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in the proper and expedient dispensation of justice. In appropriate cases, therefore, the rules may have to be so construed liberally as to meet and advance the cause of substantial justice. While it is desirable that the rules of procedure are faithfully and even meticulously observed, courts should not be so strict about procedural lapses that do not really impair the proper administration of justice. If the rules are intended to ensure the orderly conduct of litigation, it is because of the higher objective they seek which is the protection of substantive rights of the parties.[33]

Substantial justice, in other words must prevail. In *Paler*,[34] We said:

> When substantial justice dictates it, procedural rules may be relaxed in order to arrive at a just disposition of a case. The purpose behind limiting the period of appeal is to avoid unreasonable delay in the administration of justice and to put an end to controversies. A one-day delay as in this case, does not justify denial of the appeal where there is absolutely no indication of intent to delay as in this case, does not justify denial of the appeal where there is absolutely no indication of intent to delay justice on the part of Paler and the pleading is meritorious on its face.

We rule in favor of the allowance of respondents' appeal because:

> Law and jurisprudence grant to courts the prerogative to relax compliance with procedural rules of **even the most mandatory character**, mindful of the duty to reconcile both the need to put an end to litigation speedily and the parties' right to an opportunity to be heard.[35] (Emphasis supplied)

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[33] *GSIS v. Court of Appeals*, 334 Phil. 163, 174 (1997), citing *Mauna v. Civil Service Commission*, G.R. No. 97794, 13 May 1994, 232 SCRA 388, 398.

[34] *Commission on Appointments v. Paler*, 628 Phil. 26, 36 (2010).

[35] *Bank of the Philippine Islands v. Dando*, 614 Phil. 553, 562-563 (2009).

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Quoting again the case of *Republic v. Court of Appeals*,[36] we pointed out that this Court can temper rigid rules in favor of substantial justice. We find that pronouncement apt and fit to this case. Thereby we are not detained by the omissions of the respondents in their resort to the CSC, and we thus proceed to the merits of the petitioners' submissions.

Lastly, on the form, we find no merit in the contention that Aranjuez was not authorized to sign on behalf of the other petitioners. Pursuant to Union Resolution No. 015-2008[37] attached as Annex A to the Appellants' 015-2008 Consolidated Memorandum dated 26 March 2008, the officers and members of NAMDACWAD gave Aranjuez a general authority to represent the organization in all legal matters to be filed for whatever purpose it may serve. From the general and broad grant of authority, Aranjuez possessed the specific authority to sign in behalf of his principal the verification and certification against non-forum shopping required of the petition.

To the kernel, then.

DCWD primarily contends that CSC and the Court of Appeals erred in ruling that the concerted mass action on 9 November 2007 is not prohibited under Resolution No. 021316. We disagree.

DCWD relies on Resolution No. 021316, which states:

> Section 6. *Permissible Concerted Mass Action.* – A concerted activity or mass action done outside of government office hours shall not be deemed a prohibited concerted activity or mass action within the contemplation of this omnibus rules provided the same shall not occasion or result in the disruption of work or service.[38]

DCWD argues that since the concerted or mass action was done within government office hours, such act was not permissible, therefore prohibited. Otherwise stated, a concerted

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[36] *Supra*.

[37] CA *rollo*, pp. 115-116.

[38] Omnibus Rules on Prohibited Concerted Mass Action in the Public Sector.

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activity done within the regular government office hours is automatically a violation of Section 6 of the Resolution.

Notably, however, a prohibited concerted mass action is defined not in Sec. 6 of Resolution No. 021316 but in Sec. 5 thereof. Thus:

> **Section 5.** *Definition of Prohibited Concerted Mass Action*. — As used in this Omnibus Rules, the phrase "prohibited concerted activity or mass action" shall be understood to refer to any collective activity undertaken by government employees, by themselves or through their employees organizations, **with the intent of effecting work stoppage or service disruption in order to realize their demands of force concession, economic or otherwise, from their respective agencies or the government.** It shall include mass leaves, walkouts, pickets and acts of similar nature.[39] (Emphasis ours).

The operative phrases are "any collective activity" and "work stoppage or service disruption." Without the intent at work stoppage or service disruption, the concerted activity is not prohibited. The time and place of the activity are not determinative of the prohibition. Whether done within government hours, a concerted activity is allowed if it is without any intent at work stoppage.

We cannot isolate the provision of Section 6 of the Resolution from definition of prohibited activity in Section 5 thereof. It is erroneous to interpret the provisions in such a way that an act not within the circumstances as defined under Section 5 can still be regarded as prohibited if done within government hours. To subscribe to the argument of DCWD would in effect expand the definition provided by Resolution No. 021316 on what constitutes a prohibited mass action.

It is clear that the collective activity of joining the fun run in t-shirts with inscriptions on CNA incentives was not to effect work stoppage or disrupt the service. As pointed out by the respondents, they followed the advice of GM Gamboa "to be there" at the fun run. Respondents joined, and did not disrupt the fun run. They were in sports attire that they were allowed,

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[39] *Id*.

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nay required, to wear. Else, government employees would be deprived of their constitutional right to freedom of expression.[40] This, then, being the fact, we have to rule against the findings of both the CSC and Court of Appeals that the wearing of t-shirts with grievance inscriptions constitutes as a violation of Reasonable Office Rules and Regulations.

First off and as correctly pointed out by the charged officials and members in their 19 November 2007 Reply Letter to DCWD, they did not violate the 31 October 2007 Office Memorandum issued by GM Gamboa relating to the proper attire to be worn during the fun run. The Office Memorandum was clear in its order that the participants are free to wear any sports attire during the event. To reiterate, the t-shirts they wore fall within the description of "any sports attire" that the Memorandum allowed to be worn.

More importantly we need to refer to *GSIS v. Villaviza (GSIS case)*.[41] It was there ruled that the acts of GSIS employees wearing similarly colored shirts while attending a public hearing inside the GSIS Office, with clenching of fists and orating against the then President Winston Garcia, were not constitutive of a prohibited activity but were only an exercise of their constitutional freedom of expression.[42] We repeat:

> In this case, CSC found that the acts of respondents in going to the GSIS-IU office wearing red shirts to witness a public hearing do not amount to a concerted activity or mass action proscribed above. CSC even added that their actuations can be deemed an exercise of their constitutional right to freedom of expression. The CA found no cogent reason to deviate therefrom.
>
> As defined in Section 5 of CSC Resolution No. 02-1316 which serves to regulate the political rights of those in the government service, the concerted activity or mass action proscribed must be coupled with the "intent of effecting work stoppage or service disruption in order to realize their demands of force concession."

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[40] *Supra* note 29.

[41] 640 Phil. 18 (2010).

[42] *Id.* at 29.

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Wearing similarly colored shirts, attending a public hearing at the GSIS-IU office, bringing with them recording gadgets, clenching their fists, some even badmouthing the guards and PGM Garcia, are acts not constitutive of an (i) intent to effect work stoppage or service disruption and (ii) for the purpose of realizing their demands or force concession.

Precisely, the limitations or qualifications found in Section 5 of CSC Resolution No. 02-1316 are there to temper and focus the application of such prohibition. Not all collective activity or mass undertaking of government employees is prohibited. Otherwise, we would be totally depriving our brothers and sisters in the government service of their constitutional right to freedom of expression.[43]

DCWD also found that Cagula and the rest of the officials violated MC No. 33 in relation to 8 February 1996 Office Memorandum. DCWD also argues that a violation of this circular constitutes as a serious violation of CSC Rules as the circular is a CSC-issued Memorandum and not just a mere issuance of DCWD.

CSC issued MC No. 33 in recognition of the rights of the government employees to air their grievances balanced by the delivery of services to the public which should not be prejudiced. MC No. 33 sets down rules governing the posting of posters and other similar materials within the premises of government agencies as follows:

1. All head of agencies are hereby directed to provide specific spaces within their respective premises, preferably near the bundy clock, at the canteen or places normally frequented by employees, where employees' unions/associations could post their posters.
2. x x x.
3. The hanging of posters and streamers shall only be allowed in the designated areas.
4. No poster, placard, streamer or other similar materials containing abusive, vulgar, defamatory or libelous language shall be allowed.

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[43] *Id*. at 29-30.

Pursuant to this mandate, the former General Manager of DCWD issued an office memorandum designating the bulletin board at the motorpool area below the Office of the Purchasing Division and the side of the office building beside the guard house where the bundy clock is located as the designated areas for posting of grievances.[44] Clearly, the DCWD Office Memorandum hews close and faithfully to MC No. 33. It is a reasonable rule issued by the heads of the agencies in order to regulate posting of grievances of the employees.

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.[45] 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.[46]

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 their freedom of expression. It would be

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[44] CA *rollo*, p. 58.

[45] Rene B. Gorospe, *Constitutional Law*, Volume 1, 2006 ed. citing *Keyishian v. Board of Regents of University of State of New York*, 385 US 589, 605-606, 1967.

[46] *Borough of Duryea, Pennsylvania v. Guarnieri*, 131 S. Ct. 2488; 180 L. Ed. 2d 408; 2011 U.S. LEXIS 4564; 79 U.S.L.W. 4538; 32 I.E.R. Cas. (BNA) 481; 190 L.R.R.M. 3217; 22 Fla. L. Weekly Fed. S 1176, 20 June 2011 citing *Connick,* 461 U.S. 138, 103 S. Ct. 1684, 75 L. Ed. 2d 708, *Keyishian v. Board of Regents of University of State of New York,* 385 U.S. 589, 605-606, 87 S. Ct. 675, 17 L. Ed. 2d 629 (1967) and *Garcetti v. Ceballos,* 547 U.S. 410, 418, 126 S. Ct. 1951, 164 L. Ed. 2d 689 (2006).

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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.[47]

In simple paraphrase we say, regulation of the freedom of expression is not removal of the constitutional right.

Apparently, DCWD, not satisfied by the CSC ruling that a violation of the memorandum is punishable with reprimand, argues that what occurred was a serious violation implying that a higher penalty is warranted.

Under Section 52 (C) (3), Rule IV of Resolution No. 991936,[48] violation of reasonable office rules and regulations is punishable with reprimand on the first offense and suspension ranging from one to thirty days for the second offense.

In *Re: Failure of Various Employees to Register their Time of Arrival and/or Departure from Office in the Chronolog Machine,* the charged court employees were penalized for violation of reasonable office rules and regulations due to their violation of Supreme Court Administrative Circular No. 36-2001 requiring all employees to register their daily attendance, in the Chronolog Time Recorder Machine (CTRM) and in the logbook of their respective offices. Following Resolution No. 991936 that violation of reasonable rules and regulations is a light offense, the Court penalized its erring employees with the penalty of reprimand. [49]

Thus, in line with the civil service rules and jurisprudence, we conclude that a violation of an office memorandum, which was issued as an internal rule to regulate the area for posting of grievances inside the office premise, is only a light offense punishable by reprimand.

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[47] *GSIS v. Villaviza*, *supra* note 41, at 30.

[48] Uniform Rules on Administrative Cases in the Civil Service.

[49] *In RE: Failure of Various Employees to Register their Time of Arrival and/or Departure From Office in the Chronolog Machine*, 646 Phil. 18 (2010).

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Rules and regulations are issued to attain harmony, smooth operation, maximize efficiency and productivity, with the ultimate objective of realizing the functions of particular offices and agencies of the government.[50]

On the submissions that the decisions of a government agency, acting as Disciplining Authority, are immediately executory upon receipt thereof, we need merely cite Section 37 of the Resolution No. 991936 which clearly provides that:

> **Section 37.** *Finality of Decisions*. — A decision rendered by heads of agencies whereby a penalty of suspension for not more than thirty (30) days or a fine in an amount not exceeding thirty (30) days' salary is imposed, shall be final and executory. However, if the penalty imposed is suspension exceeding thirty (30) days, or fine in an amount exceeding thirty (30) days salary, the same shall be final and executory after the lapse of the reglementary period for filing a motion for reconsideration or an appeal and no such pleading has been filed.[51]

As distinguished by the law, if the imposed suspension exceeds thirty days or the fine imposed is in an amount over thirty-day salary, the decision will only attain finality after the lapse of the reglementary period in the absence of any motion for reconsideration or appeal. Penalties within the 30-day threshold are immediately executory penalties.

In this case, the members and officials, except the casual employees who were not meted with penalty as the renewal of their employment was held in abeyance, were sanctioned with penalties ranging from suspension of work from one (1) month and one (1) day to dismissal from service.[52] Evidently, the finality and execution of the judgment did not take place after the lapse of the reglementary period because as previously discussed, the members and officials were able to file their consolidated appeal in lieu of notice of appeal.

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[50] *Id*.

[51] Uniform Rules on Administrative Cases in the Civil Service.

[52] CA *rollo*, pp. 181-208.

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As clear as the provision on the finality of decisions is Section 42 of Resolution No. 991936 on the effect of motions for reconsideration. Thus:

Section 42. *Effect of Filing*. — The filing of a motion for reconsideration within the reglementary period of fifteen (15) days **shall stay the execution** of the decision sought to be reconsidered.[53] (Emphasis ours)

The first and fundamental duty of the Court is to apply the law. If the law is clear and free from any doubt or ambiguity as the quoted provision, there is no room for construction or interpretation. The letter must be taken to mean exactly what it says and the court has no choice but to see to it that its mandate is obeyed.[54]

The ponente appreciates the concurrence of Justice Marvic M.V.F. Leonen. No need was seen, though, to add to the ruling that the present facts limited.

WHEREFORE, We **DENY** the petition for review on *certiorari*. Nonetheless, the decision of the CSC which was affirmed in *toto* by the CA is **MODIFIED.** The finding of administrative liability of and the penalty of reprimand against the NAMADACWAD members namely Danilo L. Buhay, Pedro E. Alcala, Joseph A. Valdez, Tito V. Sabangan, Marcelino B. Anino, Juanito C. Pansacala, Joemarie B. Alba, Antero M. Ymas, Rolando L. Largo, Reneboy U. Esteban, Manuel B. Libang, Romeorico A. Llanos, Arthur C. Bachiller, Socrates V. Corcuera, Alejandro C. Pichon, Graciano A. Moncada, Rolando K. Escorial, Noel A. Dagale, Emilio S. Molina, Sherwin S. Solamo, and Fulgencio I. Dyguazo are hereby **REVERSED** and **SET ASIDE.**

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[53] Uniform Rules on Administrative Cases in the Civil Service.

[54] *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, G.R. No. 196907, 13 March 2013, 693 SCRA 456, 464, citing *Rizal Commercial Banking Corporation v. Intermediate Appellate Court and BF Homes, Inc*., 378 Phil. 10, 22 (1999).

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The finding of liability against the casual employees namely Edwin A. dela Peña, Jimmy A. Trocio, Wilfredo L. Torreon, Alejandrito M. Alo, Raul S. Saga, Joselito P. Riconalla, Trisebal Q. Aguilar, Arman N. Lorenzo, Sr. and Pedro C. Gunting is **REVERSED** and **SET ASIDE.**

As to officers Gualberto S. Pagatpat, Joseph B. Artajo, Felixberto Q. Obenza, Florante A. Ferraren, Elsa A. Elorde, Carlos P. Morre, James Aquilino M. Coloma, Joaquin O. Cadorna, Jr., Lorna M. Maxino, Romulo A. Reyes, Noel G. Legaspi, Eleanor R. Lamoste, Welmer E. Crasco, Delio T. Olaer, Vicente R. Masucol, Ireneo Cubal, Rodrigo L. Aranjuez, Gregorio S. Cagula and Celestino A. Bondoc, the penalty of reprimand and strong warning that a repetition of the same shall be dealt with severely is hereby **AFFIRMED.**

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Bersamin, del Castillo, Villarama, Jr., Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Leonen, J., on official leave on 16 June 2015 , left his vote. See separate concurring opinion.

Jardeleza, J., see concurring and dissenting opinion.

Peralta, J., on official leave on 16 June 2015.

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!"*

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The ponencia[1] quoted *GSIS v. Villaviza*[2] 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.[3] 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 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.[4]

Freedom to express one's views enjoys a level of primacy among our constitutional guarantees, but it has never been

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[1] *Ponencia*, p. 14.

[2] 640 Phil. 18 (2010) [Per *J*. Mendoza, *En Banc*].

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

[4] *Ponencia,* pp. 14-15, citations omitted.

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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.

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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."[5] This early law prohibited government employees from engaging in strikes to secure changes in their employment terms and conditions:

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[5] Rep. Act No. 875 (1953), Sec. 1(a).

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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.***[6] (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[,]"[7] from the right to self-organization for purposes of collective bargaining.[8] 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.[9]

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[6] Rep. Act No. 875 (1953), Sec. 11.

[7] *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.

[8] *Id*.

[9] Pres. Decree No. 442 (1974), Sec. 276.

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Alliance of Government Workers v. Minister of Labor[10] 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 that provided by law and regulation."[11] Laws that allow employees of agencies discharging proprietary functions to engage in strikes or other concerted activities belong to the past.[12]

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."[13] 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."[14]

Also enacted in 1987, our present Constitution provides that "the right to self-organization shall not be denied to government employees[,]"[15] and the state "shall guarantee the rights of all

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[10] 209 Phil. 1 (1983) [Per *J*. Gutierrez, Jr., *En Banc*].

[11] *Id*. at 21.

[12] *Id*. at 16.

[13] *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.

[14] Exec. Order No. 180 (1987), Sec. 1.

[15] Const., Art. IX-B, Sec. 2(5).

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workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law."[16]

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."[17]

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.

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."[18]

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[16] CONST., Art. XIII, Sec. 3.

[17] CONST., Art. III, Sec. 4.

[18] CONST., Art. XI, Sec. 1.

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Republic Act No. 6713[19] 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 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

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[19] This was approved on February 20, 1989.

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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.

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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.[20] The Bases Conversion and Development Authority, for example, exercises proprietary functions. *Shipside Inc. v. Court of Appeals*[21] 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***

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

[21] 404 Phil. 981 (2001) [Per *J.* Melo, Third Division].

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said that the BCDA is not a mere agency of the Government but a corporate body performing proprietary functions.[22] (Emphasis supplied)

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[23] 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."[24] 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."[25] Thus, "CSC's Resolution No. 02-1316 defining what a prohibited concerted activity or mass action has only tempered or regulated these rights."[26]

The earlier *GSIS v. Kapisanan ng Manggagawa sa GSIS*[27] 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.[28] 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

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

[23] 640 Phil. 18 (2010) [Per *J.* Mendoza, *En Banc*].

[24] *Id*. at 30.

[25] *Id*.

[26] *Id*. at 32.

[27] 539 Phil. 677 (2006) [Per *J.* Garcia, Second Division].

[28] *Id*. at 684.

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and doubtless actionable administratively".[29] This court traced jurisprudence on the matter, including *Jacinto v. Court of Appeals*[30] 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 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.[31] (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.

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[29] *Id*. at 694*, citing* CSC Resolution No. 021316, Sec. 5.

[30] 346 Phil. 656 (1997) [Per *J*. Panganiban, *En Banc*].

[31] *Id*. at 669–670.

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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."[32]

On the other hand, members of the judiciary must maintain independence, integrity, impartiality, propriety, equality, competence, and diligence.[33] "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."[34] Thus, they must "refrain from influencing in any manner the outcome of litigation or dispute pending before another court or administrative agency."[35] "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."[36] These standards present a more limited freedom of expression for judges.

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

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[32] CONST., Art. VI, Sec. 11.

[33] New Code of Judicial Conduct (2007), Canon 1, Sec. 3.

[34] New Code of Judicial Conduct (2007), Canon 4, Sec. 6.

[35] New Code of Judicial Conduct (2007).

[36] New Code of Judicial Conduct (2007), Canon 3, Sec. 4.

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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[37] 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.[38] 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."[39] 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.[40] 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.

CONCURRING AND DISSENTING OPINION

JARDELEZA, *J.*:

I agree with the *ponencia* that the Petition for Review on *Certiorari* filed by Davao City Water District ("***DCWD***") should be denied for lack of merit.

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[37] 530 Phil. 189 (2006) [Per *J.* Sandoval-Gutierrez, *En Banc*].

[38] *Id*. at 202.

[39] *Id*.

[40] *See* CONST., Art. XI, Sec. 1; Rep. Act No. 6713 (1989), Sec. 4.

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DCWD charged respondents as follows:[1] first, all respondent members and officers of *Nakahiusang Mamumuo sa DCWD* ("***NAMADACWAD***") for wearing shirts with the inscription "**CNA INCENTIVE *IHATAG NA*, DIRECTOR BRAGANZA *PAHAWA NA*!**" during DCWD's 34th anniversary celebration in violation of Civil Service Commission ("***CSC***") Resolution No. 021316 and Memorandum Circular No. 33;[2] and second, respondent union officer Gregorio S. Cagula ("***Cagula***") and all other NAMADACWAD union officers for allegedly attaching on the same date union posters with the same inscription outside designated areas in violation of DCWD's Office Memorandum dated 8 February 1996 ("***Office Memorandum***") pursuant to Memorandum Circular No. 33.

I submit that Cagula and all other respondent union officers should be exonerated from the second charge. There is no evidence of record to support the finding of fact of the DCWD, as accepted by the CSC and the Court of Appeals ("***CA***"),[3] that Cagula with the help of some NAMADACWAD members allegedly attached union posters outside the areas designated by DCWD's Office Memorandum.

Exception to the general rule that only questions of law may be reviewed under Rule 45 of the Rules of Court

Questions of fact are not reviewable in petitions for review under Rule 45 of the Rules of Court because the Court is not a trier of facts. However, there are exceptions[4] to this rule,

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[1] *Rollo,* pp. 223-226.

[2] *Rules to Govern Posting and Hanging of Posters, Placards, Streamers and Other Similar Materials* (1994).

[3] *Rollo,* p. 83.

[4] (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;

(2) When the inference made is manifestly mistaken, absurd or impossible;

(3) Where there is a grave abuse of discretion;

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which are present in this case, among them, the lack of sufficient support in evidence of the lower courts' judgment[5] and when the conclusion arrived upon by the lower courts are based on speculation, surmises and conjectures.

Furthermore, although DCWD did not raise in its petition this factual issue, Section 8, Rule 51 of the Rules of Court[6] and jurisprudence[7] permit us to review matters not assigned as errors on appeal, provided, among others, that consideration of the error is necessary in arriving at a just decision and a complete resolution of the case, or the error is closely related to an error assigned.

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(4) When the judgment is based on a misapprehension of facts;

(5) When the findings of fact are conflicting;

(6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;

(7) When the findings are contrary to those of the trial court;

(8) When the findings of fact are conclusions without citation of specific evidence on which they are based;

(9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents;

(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record; and

(11) When the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

[*Cirtek Employees Labor Union v. Cirtek Electronics, Inc.*, G.R. No. 190515, June 6, 2011, 650 SCRA 656, 660; *Andrada v. Pilhino Sales Corporation*, G.R. No. 156448, February 23, 2011, 644 SCRA 1, 10]

[5] *Co v. Yeung*, G.R. No. 212705, September 10, 2014.

[6] Section 8. Questions that may be decided. — No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors. (7a)

[7] *Martires v. Chua*, G.R. No. 174240, March 20, 2013, 694 SCRA 38, 54.

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DCWD in its petition raised the issue of whether or not Cagula and the other NAMADACWAD officers violated Memorandum Circular No. 33.[8] Thus, we can resolve the factual question of whether or not Cagula and the other NAMADACWAD members indeed attached the union posters outside the allowed areas.

Charge against respondent officers for violation of Memorandum Circular No. 33

DCWD charged the officers of NAMADACWAD as follows:

> On or about the same occasion, a NAMADACWAD official, respondent Gregorio S. Cagula, with the help of NAMADACWAD members attached some posters and/or similar materials bearing the inscription "CNA Incentives IHATAG NA! Director BRAGANZA PAHAWA NA!" to a post in the motorpool area; another poster of similar import was seen outside the guardhouse but inside the fence; both were situated within the premises of DCWD but outside the officially designated areas for posting. This act of respondent Gregorio S. Cagula appears to be an act of NAMADACWAD. As an organization, NAMADACWAD and its officials are responsible for an act of any of its officials or members committed in occasion and as a result of its duly approved concerted activity/mass action.
>
> This is in violation of Civil Service Commission Memorandum Circular No. 33, Series of 1994, regarding the Rules to Govern Posting and Hanging of Posters, Placards, Streamers and other Similar Materials. This Memorandum Circular is reiterated in Section 13 of Civil Service Commission Resolution No. 021316.[9] (Emphasis ours)

From the beginning of the case, NAMADACWAD disputed the factual allegation that Cagula or any of its members or officers attached the union posters:

> Atty. Tumanda: Okay we take note of that, thank you counsel. Anyway, I would like to make a recap on the factual issues. As I see it, it would seem that the only factual issue to be

[8] *Rollo*, p. 26.

[9] *Rollo*, pp. 224-225.

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> resolved is the posting of banners inside the DCWD compound. All others, are you admitting the facts?
>
> Atty. Lopoz: Yes, your Honor only the posting of the banner is what we contest. All the facts in relation to the acts of the respondents here of wearing the union uniform as their understanding or interpretation of sports attire, we have no question on that matter your Honor. But on the fact of posting of banners, we are questioning and contesting on this your Honor.[10]

To support the charge against the union officers, DCWD presented photographs as physical evidence and the testimonies of two employees who took the photographs. The first set of photographs shows the posters already attached to the post in the motorpool area, with Cagula and other NAMADACWAD members standing nearby. The second set of photographs shows the posters already attached to a post inside the premises of DCWD but outside the designated areas.[11]

DCWD finds, and the CSC and the CA affirm, that the photographs are substantial evidence to prove that Cagula and other NAMADACWAD members attached the union posters outside the designated areas. The DCWD Administrative Committee held:

> The Committee sees the pictures unfolding a sequence of events. As shown, there were three (3) persons standing close to one another facing the post, with arms extended and holding some sort of white bond paper, one of them, Board Director of NAMADACWAD. When they left the post, it was shown that a white bond paper with inscriptions "CNA Incentive ihatag na! Director Braganza pahawa na!" was already attached to the post. All these show that there is substantial evidence to conclude that respondent Gregorio S. Cagula was responsible to the posting of banner.[12]

I disagree with this conclusion. Unfortunately, the photographs do not form part of the records for the Court to examine.

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[10] *Id.* at 229; underscoring omitted.

[11] *Rollo*, pp. 115, 127-128, 236, 250; CA *rollo*, pp. 12, 379.

[12] *Rollo*, p. 249.

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However, based on DCWD's holding in relation to the first set of photographs, one photograph allegedly shows Cagula with two other persons near a post holding a white bond paper. Another photograph shows a union poster already attached to the post. These photographs do not prove that Cagula or any NAMADACWAD member attached the union poster outside designated areas. The two sets of photographs were taken by two employees who testified for DCWD. Neither testified that they saw Cagula in the act of attaching the posters.

Ms. Jennife D.P. Dumalag ("***Dumalag***") and Mr. Jerell J. Leonida ("***Leonida***"), the DCWD's employees who took the pictures, testified that they did not see who attached the union posters outside the designated areas.[13]

Posters in the Motorpool area

Dumalag, the employee who took the pictures showing the posters in the motorpool area testified on cross-examination:

Atty. Lopoz: Could you please read the wordings in the pictures you have taken? Particularly in Exhibit 34 "F-62".

Ms. Dumalag: No to Privatization of Water District! Consumer Alert. CNA Incentive Ihatag Na! Dir. Braganza Pahawa Na!

xxx x x x xxx

Atty. Lopoz: Okay, did you really see who posted these posters particularly in this Exhibit 34 "F-62".

Ms. Dumalag: I could not really recall who posted those but the picture would tell.

Atty. Lopoz: The picture would tell, but you did not see who really posted these posters?

Ms. Dumalag: To my recollection your Honor if I may review the picture, there could be but the way it was documented…

Atty. Lopoz: But the question is, did you see somebody who posted those posters?

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[13] *Id.* at 233-234.

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Ms. Dumalag: Those were posted already.

Atty. Lopoz: Did you see who posted these?

Ms. Dumalag: I cannot recall, but…

Atty. Lopoz: Okay, thank you. So you cannot recall and perhaps by your recollection as you have mentioned earlier that the pictures would tell. So you somehow presumed that somebody from those people you have taken pictures posted that posters?

Ms. Dumalag: I did.

x x x[14]

(Emphasis ours)

DCWD concluded that the photographs showed a "sequence of events" constituting "substantial evidence x x x that respondent Gregorio S. Cagula was responsible to the posting of banner."[15] This finding is erroneous and contradicts the record. There is no showing what type of camera Dumalag used but she was on the scene. One photograph shows Cagula and two other persons "standing close to one another facing the post." Another photograph shows that "after they left the post," the poster was "already attached to the post." Assuming the photographs were indeed taken in sequence and for some reason Dumalag was unable to take photographs of the actual posting, she was on the scene and should have witnessed who actually attached the poster. However, her testimony is that she cannot "recall," as a result of which she merely presumed it was one of "those people," meaning the three, among them Cagula.

Other Posters Inside DCWD's Premises

Leonida, the other employee who took the pictures showing posters attached to a post inside the premises of DCWD but outside the designated areas, testified that he did not see who attached the union posters. Leonida testified on cross-examination:

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[14] *Id.* at 233.

[15] *Id.* at 249.

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Atty. Lopoz: Na na'ay nakapilit sa poste na coupon bond, ikaw ba ng nagpicture ani (*That there was a coupon bond posted in the post*)?

Mr. Leonida: Yes, Sir.

Atty. Lopoz: Sa atoa pa, nakita ka kung kinsa ang nagbutang ana (*Or in other words, you saw who placed that*)?

Mr. Leonida: Wala (*No*), Sir.

Atty. Lopoz: So imoha lang gyud gi-pikturan na nakapilit na siya (*So you just purely took pictures when it was already posted*)?

Mr. Leonida: Yes, Sir.

Atty. Lopoz: Pero wala gyud ka nakakita kung kinsa gyud nagbutang ana (*But you actually did not see who placed that*)?

Mr. Leonida: Yes, Sir.

x x x[16]

(Underscoring in the original)

The DCWD Administrative Committee itself found that no one saw who posted in this area.[17] Like Dumalag, Leonida admitted that he only took the pictures when the posters were already attached. For that matter, considering that there is no testimonial or physical evidence shown that Cagula or any other NAMADACWAD member attached the union posters outside designated areas, there is no basis to hold them liable in violation of Memorandum Circular No. 33.

Individual liability for unlawful acts in a mass action

Even assuming for the sake of argument that Cagula or any other NAMADACWAD member indeed attached the union posters outside the designated areas, the conclusion that "NAMADACWAD and its officials are responsible for an act of any of its officials or members"[18] is wrong as a matter of law.

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[16] *Id.* at 234.

[17] *Id.* at 250.

[18] *Id.* at 224-225.

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Liability for unlawful or prohibited acts committed in a strike or other concerted mass action is legally determined ***individually***, not collectively.[19] Article 277[20] of the Labor Code does not hold the officers of a union responsible for an illegal act of another officer:

> Art. 277. Prohibited activities.
>
> (a) No labor organization or employer shall declare a strike or lockout without first having bargained collectively in accordance with Title VII of this Book or without first having filed the notice required in the preceding Article or without the necessary strike or lockout vote first having been obtained and reported to the Ministry.
>
> No strike or lockout shall be declared after assumption of jurisdiction by the President or the Minister or after certification or submission of the dispute to compulsory or voluntary arbitration or during the pendency of cases involving the same grounds for the strike or lockout.
>
> Any worker whose employment has been terminated as a consequence of any unlawful lockout shall be entitled to reinstatement with full backwages. Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status: Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike. (Emphasis ours)

A strike or mass action which is legal does not become illegal merely because it is tainted by prohibited acts.[21] Here, there was no prohibited mass action, and thus the union officers who wore shirts with the inscription were not held liable. Further, the alleged prohibited act of posting is not proven.

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[19] *Shell Oil Workers' Union v. Shell Company of the Philippines, Ltd.*, G.R. No. L-28607, May 31, 1971, 39 SCRA 276; *A. Soriano Aviation v. Employees Association of A. Soriano Aviation, et al.*, G.R. No. 166879, August 14, 2009, 596 SCRA 189.

[20] Previously Art. 264 of the Labor Code.

[21] *Shell Oil Workers' Union v. Shell Company of the Philippines, Ltd.*, G.R. No. L-28607, May 31, 1971, 39 SCRA 276.

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A reprimand is a public and formal censure or severe reproof administered to a person at fault by his superior officer or a body to which he belongs.[22] Although a reprimand may be a slight form of penalty, it still goes into the record of the employee. It is unjust to impose even the slightest form of penalty to an employee, whether or not in the government, where the alleged infraction is not proven with substantial evidence.

Accordingly, I vote to DISMISS the petition. For the reasons stated, I respectfully submit that we exonerate respondent Cagula and all other respondent union officers from the charge of attaching the union posters outside the designated areas.

EN BANC

[G.R. No. 194239. June 16, 2015]

WEST TOWER CONDOMINIUM CORPORATION, on behalf of the Residents of West Tower Condominium and in representation of Barangay Bangkal, and others, including minors and generations yet unborn, *petitioners, vs.* **FIRST PHILIPPINE INDUSTRIAL CORPORATION, FIRST GEN CORPORATION and their RESPECTIVE BOARD OF DIRECTORS AND OFFICERS, JOHN DOES, and RICHARD DOES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL ACTIONS; PARTIES; REAL PARTY–IN-INTEREST; DEFINED AND CONSTRUED; PRESENT IN

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[22] *Tobias v. Hon. Veloso*, G.R. No. L-40224, September 23, 1990, 100 SCRA 177.