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THIRD DIVISION

[G.R. No. 210773. January 23, 2019]

GSIS FAMILY BANK EMPLOYEES UNION, REPRESENTED BY ITS PRESIDENT MS. JUDITH JOCELYN MARTINEZ, *petitioner, vs.* **SEC. CESAR L. VILLANUEVA (IN HIS CAPACITY AS THE CHAIRMAN OF THE GOVERNANCE COMMISSION FOR GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS UNDER THE OFFICE OF THE PRESIDENT), MR. EMMANUEL L. BENITEZ (IN HIS CAPACITY AS PRESIDENT OF THE GSIS FAMILY BANK), AND ATTY. GERALDINE MARIE BERBERABE-MARTINEZ (IN HER CAPACITY AS CHAIRPERSON OF THE BOARD OF DIRECTORS OF THE GSIS FAMILY BANK),** *respondents.*

SYLLABUS

1. POLITICAL LAW; JUDICIAL DEPARTMENT; TRADITIONAL AND EXPANDED POWER OF JUDICIAL REVIEW; THE SUPREME COURT'S EXPANDED POWER OF JUDICIAL REVIEW REQUIRES A *PRIMA FACIE* SHOWING OF GRAVE ABUSE OF DISCRETION BY ANY GOVERNMENT BRANCH OR INSTRUMENTALITY.— Judicial power is the court's authority to "settle justiciable controversies or disputes involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violations of such rights." This Court's judicial power is anchored on Article VIII, Section 1 of the 1987 Constitution, x x x Judicial power includes the power to enforce rights conferred by law and determine grave abuse of discretion by any government branch or instrumentality. Jurisprudence has consistently referred to these two (2) as the court's traditional and expanded powers of judicial review. Traditional judicial power is the court's authority to review and settle actual controversies or conflicting rights between dueling parties and enforce legally demandable rights. An actual case or controversy exists "when the case presents conflicting

or opposite legal rights that may be resolved by the court in a judicial proceeding." On the other hand, the framers of the 1987 Constitution deliberately expanded this Court's power of judicial review to prevent courts from seeking refuge behind the political question doctrine and turning a blind eye to abuses committed by the other branches of government. This Court's expanded power of judicial review requires a prima facie showing of grave abuse of discretion by any government branch or instrumentality. This broad grant of power contrasts with the remedy of certiorari under Rule 65, which is limited to the review of judicial and quasi-judicial acts. Nonetheless, this Court, by its own power to relax its rules, allowed Rule 65 to be used for petitions invoking the courts' expanded jurisdiction.

2. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CERTIORARI; IN ORDER FOR A WRIT OF CERTIORARI MAY BE ISSUED, THREE (3) THINGS MUST BE ALLEGED IN THE PETITION AND MUST BE PROVEN; ENUMERATED.—** Thus, a writ of certiorari may only be issued when the following are alleged in the petition and proven: (1) the writ is directed against a tribunal, a board[,] or any officer exercising judicial or quasi[-]judicial functions; (2) such tribunal, board[,] or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy[,] and adequate remedy in the ordinary course of law.

3. **POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 10149 GOCC GOVERNANCE ACT OF 2011); GOVERNANCE COMMISSION; THE GOVERNANCE COMMISSION IS AN ATTACHED AGENCY OF THE OFFICE OF THE PRESIDENT, HENCE, ANY QUESTION TO ITS LEGAL OPINION SHOULD BE ELEVATED TO THE OFFICE OF THE PRESIDENT.—** The Governance Commission was created under Republic Act No. 10149. It is attached to the Office of the President and is the "central advisory, monitoring, and oversight body with authority to formulate, implement[,] and coordinate policies" relative to government-owned and controlled corporations. It has no judicial or quasi-judicial authority, as evidenced by its powers and functions under the law. x x x The Governance Commission possesses neither judicial nor quasi- judicial powers; thus, it cannot review

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or settle actual controversies or conflicting rights between dueling parties and enforce legally demandable rights. It is not a tribunal or board exercising judicial or quasi-judicial functions that may properly be the subject of a petition for certiorari. x x x A careful reading of the March 8, 2013 letter likewise demonstrates its advisory nature with no directive for respondents to refrain from negotiating with petitioner. Further, petitioner failed to prove that it had no other "plain, speedy[,] and adequate remedy in the ordinary course of law" aside from its present Petition. The Governance Commission is an attached agency of the Office of the President; hence, petitioner could have elevated the advisories to the Office of the President to question the Governance Commission's legal opinion.

4. ID.; ID.; ID.; ID.; AS A COLLEGIAL BODY, ALL MEMBERS OF THE GOVERNANCE COMMISSION SHOULD BE IMPLEADED AS INDISPENSABLE PARTIES OF A PETITION; EFFECT OF FAILURE TO IMPLEAD IN CASE AT BAR.— The Governance Commission is composed of five (5) members. The chairperson, with a rank of Cabinet Secretary, and two (2) other members, with the rank of Undersecretary, are appointed by the President. The Department of Budget and Management and the Department of Finance Secretaries sit as *ex-officio* members. As a collegial body, all members of the Governance Commission should have been impleaded as indispensable parties in the Petition, since no final determination of the action can be reached without them. As it is, petitioner's failure to implead all members of the Governance Commission should lead to the outright dismissal of this Petition as their non-inclusion is debilitating since this Court cannot exercise its juridical power when an indispensable party is not impleaded.

5. REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; COURTS GENERALLY DISMISS CASES ON THE GROUND OF MOOTNESS; EXCEPTIONS.— A case is deemed moot when it ceases to present a justiciable controversy due to a supervening event. The lack of an actual or justiciable controversy means that the court has nothing to resolve, and will, in effect, only render an advisory opinion. Courts generally dismiss cases on the ground of mootness unless any of the following instances are present: (1) grave constitutional violations; (2) exceptional character of the case; (3) paramount

public interest; (4) the case presents an opportunity to guide the bench, the bar, and the public; or (5) the case is capable of repetition yet evading review.

6. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT No. 10149 (GOCC GOVERNANCE ACT OF 2011); GOVERNMENT OWNED AND CONTROLLED CORPORATION (GOCC); THREE (3) ATTRIBUTES NECESSARY TO BE CLASSIFIED AS A GOVERNMENT OWNED AND CONTROLLED CORPORATION, ENUMERATED.— On July 25, 1987, then President Corazon C. Aquino issued Executive Order No. 292 or the Administrative Code of 1987, which replaced the 1917 colonial period Administrative Code in effect then, and laid out in a "unified document the major structural, functional[,] and procedural principles and rules of governance[.]" Section 2(13) of Executive Order No. 292 defined a government-owned or controlled corporation: x x x This definition was echoed in Section 3(o) of Republic Act No. 10149: x x x Thus, a government-owned or controlled corporation is: (1) established by original charter or through the general corporation law; (2) vested with functions relating to public need whether governmental or proprietary in nature; and (3) directly owned by the government or by its instrumentality, or where the government owns a majority of the outstanding capital stock. Possessing all three (3) attributes is necessary to be classified as a government-owned or controlled corporation. x x x Republic Act No. 10149 defines a non-chartered government-owned or controlled corporation as a government-owned or controlled corporation that was organized and is operating under the Corporation Code. It does not differentiate between chartered and non-chartered government-owned or controlled corporations; hence, its provisions apply equally to both: x x x Section 9 of Republic Act No. 10149 also categorically states, "Any law to the contrary notwithstanding, no [government-owned or controlled corporation] shall be exempt from the coverage of the Compensation and Position Classification System developed by the [Governance Commission] under this Act." Furthermore, Republic Act No. 10149 directed the Governance Commission to develop a Compensation and Position Classification System, to be submitted for the President's approval, which shall apply to all officers and employees of government-owned or controlled corporations, whether chartered or non-chartered.

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7. ID.; BILL OF RIGHTS; RIGHT TO SELF-ORGANIZATION; WHILE THE RIGHT TO SELF-ORGANIZATION IS ABSOLUTE, THE RIGHT OF GOVERNMENT EMPLOYEES TO COLLECTIVE BARGAINING AND NEGOTIATION IS SUBJECT TO LIMITATIONS; ELUCIDATED.— The right of workers to self-organization, collective bargaining, and negotiations is guaranteed by the Constitution under Article XIII, Section 3: x x x The right to self-organization is not limited to private employees and encompasses all workers in both the public and private sectors, as shown by the clear declaration in Article IX(B), Section 2(5) that "the right to self- organization shall not be denied to government employees." Article III, Section 8 of the Bill of Rights likewise states, "[t]he right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged." While the right to self-organization is absolute, the right of government employees to collective bargaining and negotiation is subject to limitations. Collective bargaining is a series of negotiations between an employer and a representative of the employees to regulate the various aspects of the employer-employee relationship such as working hours, working conditions, benefits, economic provisions, and others. Relations between private employers and their employees are subject to the minimum requirements of wage laws, labor, and welfare legislation. Beyond these requirements, private employers and their employees are at liberty to establish the terms and conditions of their employment relationship. In contrast with the private sector, the terms and conditions of employment of government workers are fixed by the legislature; thus, the negotiable matters in the public sector are limited to terms and conditions of employment that are not fixed by law *Social Security System Employees Association v. Court of Appeals* explains that instead of a collective bargaining agreement or negotiation, government employees must course their petitions for a change in the terms and conditions of their employment through the Congress for the issuance of new laws, rules, or regulations to that effect: x x x When it comes to collective bargaining agreements and collective negotiation agreements in government-owned or controlled corporations, Executive Order No. 203 unequivocally stated that while it recognized the right of workers to organize, bargain, and negotiate with their employers, "the Governing

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> Boards of all covered [government-owned or controlled corporations], whether Chartered or Non-chartered, may not negotiate with their officers and employees the economic terms of their [collective bargaining agreements]."

APPEARANCES OF COUNSEL

Dela Cruz Entero & Associates for petitioner.

Office of the Government Corporate Counsel for respondents E.L. Benitez & G.M. Berberabe-Martinez.

D E C I S I O N

LEONEN, *J.*:

Officers and employees of government-owned or controlled corporations without original charters are covered by the Labor Code, not the Civil Service Law. However, non-chartered government-owned or controlled corporations are limited by law in negotiating economic terms with their employees. This is because the law has provided the Compensation and Position Classification System, which applies to all government-owned or controlled corporations, chartered or non-chartered.

This Court resolves a Petition[1] for Certiorari, Prohibition, and Mandamus filed by the GSIS Family Bank Employees Union (GSIS Union), praying that GSIS Family Bank be declared outside the coverage of Republic Act No. 10149 and, therefore, be directed to negotiate a new collective bargaining agreement with its employees.

On July 22, 1969, Royal Savings Bank was organized and incorporated as a thrift bank. It began operating on February 8, 1971, with former Cavite Representative Renato Dragon as its President and Board Chairman.[2]

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[1] *Rollo*, pp. 3-31.

[2] *Id*. at 103.

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On June 28, 1984, Royal Savings Bank filed an application with the Central Bank of the Philippines (Central Bank) for the appointment of a conservator.[3]

On July 6, 1984, the Central Bank denied Royal Savings Bank's application for conservatorship, prohibited it from doing business, and placed it under receivership.[4]

Royal Savings Bank filed several complaints against the Central Bank for grave abuse of discretion. To amicably settle the cases, then Central Bank Governor Jose B. Fernandez, Jr. offered to reopen and rehabilitate Royal Savings Bank if it would drop all its complaints against the Central Bank and transfer all its shares of stock to Commercial Bank of Manila, a wholly-owned subsidiary of the Government Service Insurance System.[5]

On September 7, 1984, Royal Savings Bank and Commercial Bank of Manila entered into a Memorandum of Agreement to rehabilitate and infuse capital into Royal Savings Bank. Royal Savings Bank was renamed Comsavings Bank.[6]

Sometime in December 1987, the Government Service Insurance System transferred its holdings from Commercial Bank of Manila to Boston Bank. Comsavings Bank was not included in the transfer. Due to Boston Bank's acquisition of Commercial Bank of Manila, the Government Service Insurance System took over the control and management of Comsavings Bank.[7]

On July 19, 1993, Comsavings Bank and the Government Service Insurance System executed a Memorandum of Agreement where the latter committed to infuse an additional capital of ₱2.5 billion into Comsavings Bank. After the infusion of funds, the Government Service Insurance System effectively owned 99.55% of Comsavings Bank's outstanding shares of stock.[8]

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[3] *Id*. at 51.

[4] *Id*.

[5] *Id*.

[6] *Id*. at 51-52.

[7] *Id*. at 52.

[8] *Id*.

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Sometime in July 2001, Comsavings Bank changed its name to GSIS Family Bank.[9]

On May 25, 2004,[10] acting on a request for opinion from GSIS Family Bank, the General Counsel of Bangko Sentral ng Pilipinas opined that GSIS Family Bank could not be categorized as a government bank:

> [GSIS Family Bank], when it was still [Royal Savings Bank], was organized as a private stock savings and loan association organized under the general corporation law. Thus, at its inception, the bank was set up for private needs. When GSIS invested in the bank, it was the result of a business decision on its part to be an equity owner in a thrift bank. The case of [GSIS Family Bank] is unlike that of government banks, such as Development Bank of the Philippines, the Land Bank of the Philippines or Al-Amanah Islamic Development Bank[,] the charters of which were enacted by the lawmaking authority for the purpose of addressing public needs....
>
> It is true that P.D. No. 2029 simply defines a GOCC as "a stock or non-stock corporation, whether performing governmental or proprietary functions, which is charted by special law or if organized under the general corporation law is owned by the government directly or indirectly through a parent corporation or subsidiary corporation to the extent of at least a majority of its outstanding capital . . . stock or of its outstanding voting capital stock". We believe however that this definition, which merely requires ownership by the government for an entity to qualify as a GOCC, has been qualified by the subsequent promulgation of E.O. No. 292 . . . which requires, in addition, that the institution was organized to serve public needs.
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> In view of the foregoing, we find insufficient basis to categorize [GSIS Family Bank] as a government bank.[11]

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[9] *Id*. at 6.

[10] *Id*. at 88-89. The opinion was written by Director Candon B. Guerrero of the Supervision and Examination Department III, Bangko Sentral ng Pilipinas.

[11] *Id*. at 88-89.

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On September 8, 2010, then President Benigno S. Aquino III (President Aquino) issued Executive Order No. 7,[12] which placed an indefinite moratorium on increases in salaries and benefits of employees in government-owned or controlled corporations and government financial institutions.[13]

On June 6, 2011, President Aquino signed into law Republic Act No. 10149, or the GOCC Governance Act of 2011.[14] The law created the Governance Commission for Government-Owned or Controlled Corporations (Governance Commission), defined as "a central advisory, monitoring, and oversight body with authority to formulate, implement[,] and coordinate policies"[15] in its governed sector.

On May 2, 2012, Emmanuel L. Benitez (Benitez), GSIS Family Bank's president, sought opinion from the Bangko Sentral ng Pilipinas as to whether GSIS Family Bank may be considered as a government-owned or controlled corporation or government bank under Republic Act No. 10149.[16]

On May 14, 2012, Bangko Sentral ng Pilipinas advised GSIS Family Bank to seek the opinion of the Governance Commission, the implementing agency of Republic Act No. 10149.[17]

On January 15, 2013, GSIS Family Bank met with representatives of the Governance Commission, which clarified that GSIS Family Bank was classified as a government financial institution under Republic Act No. 10149.[18]

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[12] Directing the Rationalization of the Compensation and Position Classification System in the Government-Owned and -Controlled Corporations (GOCCs) and Government Financial Institutions (GFIS), and for Other Purposes.

[13] *Rollo*, p. 13.9.

[14] *Id*. at 131.

[15] Rep. Act No. 10149 (2011), Ch. II, Sec. 5.

[16] *Rollo*, p. 40.

[17] *Id*. at 40-41. The letter was written by Officer-in-Charge Elmore O. Capule of the Office of the General Counsel and Legal Services, Bangko Sentral ng Pilipinas.

[18] *Id*. at 51.

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On February 11, 2013, Benitez wrote[19] the Governance Commission to seek further clarification on several issues, namely: (1) GSIS Family Bank's impending collective bargaining negotiations with its employees; (2) its authority to enter into a collective bargaining agreement with the GSIS Union; and (3) its employees' right to strike.[20] Benitez asked:

> Should a CBA be the proper mode of determining the terms and conditions of employment of the rank-and-file employees, the question as to which matters may be negotiated remains[?]
>
> Did R.A. 10149 effectively amend the provisions of the Labor Code on [collective bargaining agreements] insofar as compensation is concerned? Under said law, management and labor may no longer voluntarily determine the compensation the employees would be entitled to as the law provides for the development of a "Compensation and Position Classification System which shall apply to all officers and employees of the GOCCs whether under the Salary Standardization Law or exempt therefrom and shall consist of classes of positions grouped into such categories as the GCG may determine, subject to approval of the President."[21]

On March 8, 2013,[22] the Governance Commission replied that as a government financial institution, GSIS Family Bank was unauthorized to enter into a collective bargaining agreement with its employees "based on the principle that the compensation and position classification system is provided for by law and not subject to private bargaining."[23]

The Governance Commission further clarified that the right to strike of GSIS Family Bank's employees was not guaranteed

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[19] *Id*. at 51-57.

[20] *Id*. at 54-55.

[21] *Id*. at 54.

[22] *Id*. at 58-74. The Letter was signed by Chairman Cesar L. Villanueva and Commissioners Ma. Angela E. Ignacio and Rainier B. Butalid of the Governance Commission.

[23] *Id*. at 67.

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by the Constitution, as they were government officers and employees.[24]

On December 20, 2013, counsel for the GSIS Union sent GSIS Family Bank a demand letter[25] for the payment of Christmas bonus to its members, as stipulated in their Collective Bargaining Agreement. GSIS Union accused GSIS Family Bank of evading its contractual obligation to its employees by invoking the Governance Commission's opinion that it was no longer authorized to grant incentives and other benefits to its employees, unless authorized by the President of the Philippines.[26]

GSIS Union alleged that Republic Act No. 10149 does not apply to GSIS Family Bank, as it was a private bank created and established under the Corporation Code.[27] It asserted that even if the Government Service Insurance System owned a majority of GSIS Family Bank's outstanding capital stock, the change in ownership of shares did not automatically place the bank under the operation of Republic Act No. 10149.[28]

For GSIS Family Bank's refusal to negotiate a new collective bargaining agreement, the GSIS Union filed a Complaint before the National Conciliation and Mediation Board, and later, a Notice of Strike.[29]

Some bank employees also filed their own Complaints before the National Labor Relations Commission and the Department of Labor and Employment. They aimed to compel GSIS Family Bank to abide by the provisions of their existing Collective Bargaining Agreement.[30]

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[24] *Id.* at 68.

[25] *Id.* at 75-87.

[26] *Id.* at 75.

[27] *Id.* at 76.

[28] *Id.* at 77.

[29] *Id.* at 9.

[30] *Id.* at 11.

On January 30, 2014, petitioner GSIS Union filed before this Court a Petition for Certiorari,[31] asserting that GSIS Family Bank is a private bank; thus, it is not covered by the provisions of Republic Act No. 10149.[32]

Petitioner contends that GSIS Family Bank does not perform functions for public needs since it was created "by private individuals in their own private capacities pursuant to the provisions of the Corporation Code, to advance their own private, personal[,] and economic or financial and business needs or interests."[33]

Petitioner argues that despite the Government Service Insurance System owning the majority of GSIS Family Bank's shares of stock, the bank did not automatically fall within the ambit of Republic Act No. 10149.[34] Further, the law's enactment did not automatically convert it into a government-owned or controlled corporation or a government financial institution.[35]

Petitioner cites *Phil. National Oil Company-Energy Dev't. Corp. v. Hon. Leogardo*,[36] which stated that the employees of the Philippine National Oil Company-Energy Development Corporation, a government-owned or controlled corporation incorporated under the Corporation Code, remained subject to the provisions of the Labor Code.[37]

Finally, petitioner stresses that as a private corporation established under the Corporation Code, GSIS Family Bank and its employees are covered by the applicable provisions of the Labor Code, not the Civil Service Law. Thus, the Collective

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[31] *Id*. at 3-31.

[32] *Id*. at 14

[33] *Id*. at 15.

[34] *Id*. at 17.

[35] *Id*. at 18-19.

[36] 256 Phil. 475 (1989) [Per *J*. Melencio-Herrera, Second Division].

[37] *Rollo*, pp. 16-17.

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Bargaining Agreement between petitioner and GSIS Family Bank cannot be impaired by Republic Act No. 10149.[38]

On April 28, 2014, respondents Benitez and Atty. Geraldine Marie Berberabe-Martinez (Atty. Berberabe-Martinez) filed their Comment.[39] They admit that after the Government Service Insurance System purchased majority of GSIS Family Bank's shares, the bank continued to operate as a private bank, governed by the Corporation Code and the Labor Code. However, they point out that with the enactment of Republic Act No. 10149, GSIS Family Bank's authority to enter into negotiations with its employees was revoked, as confirmed by the Governance Commission.[40]

Respondents Benitez and Atty. Berberabe-Martinez also point out that the Petition for Certiorari, Prohibition, and Mandamus was fatally defective since respondents do not exercise judicial or quasi-judicial functions. Further, they maintain that the Collective Bargaining Agreement provided remedies for the enforcement of rights, of which petitioner supposedly did not avail. Thus, there was a plain, speedy, and adequate remedy available to it, without need to directly resort to this Court with a Rule 65 petition.[41]

Nonetheless, respondents Benitez and Atty. Berberabe-Martinez insist that as a government-acquired bank, GSIS Family Bank is a government- owned or controlled corporation under Republic Act No. 10149.[42] They stress that they merely followed the Governance Commission's directive forbidding them from negotiating the economic terms of a collective bargaining agreement with petitioner.[43] They likewise contend that GSIS

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[38] *Id*. at 19-20.

[39] *Id*. at 103-121.

[40] *Id*. at 104-106.

[41] *Id*. at 106-108.

[42] *Id*. at 110-111.

[43] *Id*. at 112-113.

Family Bank, a government financial institution covered by the Compensation and Position Classification System, is not at liberty to negotiate economic terms with its employees and cannot set its own salary or compensation scheme.[44]

On May 28, 2014, respondent Secretary Cesar L. Villanueva (Villanueva) filed his Comment,[45] where he brings up petitioner's failure to implead several indispensable parties. He states that despite the Governance Commission being a collegial body with five (5) members, only he was impleaded in the Petition as the Governance Commission's chair. He also stresses that GSIS Family Bank is governed by a Board of Directors, yet petitioner only impleaded its President and Board Chairman.[46]

Respondent Villanueva likewise states that petitioner availed of the wrong remedy[47] and violated the rule on judicial hierarchy by directly filing its Petition before this Court.[48]

As for the substantial issues, respondent Villanueva points out that GSIS Family Bank, as a government-owned or controlled corporation, specifically a government financial institution, falls within the ambit of Republic Act No. 10149 and is subject to the Governance Commission's regulatory jurisdiction.[49]

Respondent Villanueva rejects petitioner's argument that Republic Act No. 10149 only applies to corporations with original charters. He emphasizes that the law does not distinguish between chartered and non-chartered corporations:[50]

All GOCCs, whether chartered or non-chartered, are government corporations brought about by the fact that they are owned and/or

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[44] *Id*. at 113-115.

[45] *Id*. at 129-160.

[46] *Id*. at 133-134.

[47] *Id*. at 134-136.

[48] *Id*. at 136-137.

[49] *Id*. at 137-146.

[50] *Id*. at 143-146.

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controlled by the government. While non-chartered GOCCs are akin to "*private corporation*s" in the sense that their juridical entity and intra-corporate relationships are primarily governed by the Corporation Code and fall within the administrative jurisdiction of the [Securities and Exchange Commission], they remain to be "government corporations" in the sense that they fall within the coverage of GOCCs under the Administrative Code of 1987, and now also under R.A. No. 10149.[51] (Emphasis in the original, citation omitted)

Respondent Villanueva explains that Republic Act No. 10149 aimed to standardize or rationalize the compensation framework of government-owned or controlled corporations and government financial institutions to remedy the "severe pay imbalance between personnel of these special entities and the rest of the bureaucracy following the [Salary Standardization Law]."[52] Under Republic Act No. 10149, the Governance Commission submitted a Compensation and Position Classification System to President Aquino for his approval. Thus, pending President Aquino's approval, a moratorium was established on any increase in salaries and benefits, and any salary increase shall be subject to the President's approval.[53]

Finally, respondent Villanueva declares that this Court, in *Galicto v. H.E. President Aquino III, et al.*,[54] recognized the President's power to provide a compensation system for government-owned or controlled corporations.[55]

On January 12, 2015, petitioner filed its Reply.[56] It avers that respondents Villanueva, Benitez, and Atty. Berberabe-Martinez were impleaded as the officers of Governance Commission and GSIS Family Bank who issued and affirmed the assailed directives. Hence, they cannot excuse themselves

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[51] *Id*. at 146.

[52] *Id*. at 152.

[53] *Id*. at 154-155.

[54] 683 Phil. 141 (2012) [Per *J*. Brion, *En Banc*].

[55] *Rollo*, p. 155.

[56] *Id*. at 169-195.

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by "conveniently saying that the rest of the Board of Directors and/or the institutions they represent have not been impleaded in the petition."[57]

Petitioner also insists that the Governance Commission and GSIS Family Bank are not indispensable parties.[58] Further, petitioner stresses that the issue at hand was the correct interpretation of Republic Act No. 10149; thus, the non-inclusion of the Governance Commission and GSIS Family Bank as party respondents was not fatal to its cause. Nonetheless, petitioner concedes that if this Court declares them to be indispensable parties, it will willingly implead them with the proper motion.[59]

Petitioner likewise argues that its Petition for Certiorari, Prohibition, and Mandamus was the correct remedy, as it seeks judicial declaration of the applicability of Republic Act No. 10149 to GSIS Family Bank, and for this Court to compel respondents Benitez and Atty. Berberabe-Martinez to negotiate a new collective bargaining agreement.[60]

Petitioner then reiterates that GSIS Family Bank remains a private bank, outside the coverage of Republic Act No. 10149.[61]

On May 13, 2016, the Bangko Sentral ng Pilipinas Monetary Board, through MB Resolution 826.A,[62] prohibited GSIS Family Bank from doing business and designated the Philippine Deposit and Insurance Corporation as its receiver.

The three (3) issues for this Court's resolution are:

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[57] *Id*. at 170.

[58] *Id*.

[59] *Id*. at 170-171.

[60] *Id*. at 171-173.

[61] *Id*. at 177-178.

[62] Bangko Sentral ng Pilipinas, Circular Letter No. CL-2016-036. < http://www.bsp.gov.ph/downloads/regulations/attachments/2016/c1036.pdf > (last accessed on September 13, 2018).

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First, whether or not the Petition for Certiorari is the correct remedy;

Second, whether or not the closure of GSIS Family Bank has rendered the Petition moot; and

Third, whether or not GSIS Family Bank, a non-chartered government-owned or controlled corporation, can enter into a collective bargaining agreement with its employees.

I

Judicial power is the court's authority to "settle justiciable controversies or disputes involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violations of such rights."[63]

This Court's judicial power is anchored on Article VIII, Section 1 of the 1987 Constitution, which provides:

> SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Judicial power includes the power to enforce rights conferred by law and determine grave abuse of discretion by any government branch or instrumentality. Jurisprudence has consistently referred to these two (2) as the court's traditional and expanded powers of judicial review.[64]

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[63] *Lopez v. Roxas, et al.,* 124 Phil. 168, 173 (1966) [Per *C.J.* Concepcion, *En Banc*].

[64] *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc., et al.*, 802 Phil. 116, 137-139 (2016) [Per J. Brion, En Banc]; and *Araullo, et al. v. President Benigno S.C. Aquino III, et al.*, 737 Phil. 457, 525-527 (2014) [Per *J.* Bersamin, *En Banc*].

Traditional judicial power is the court's authority to review and settle actual controversies or conflicting rights between dueling parties and enforce legally demandable rights. An actual case or controversy exists "when the case presents conflicting or opposite legal rights that may be resolved by the court in a judicial proceeding."[65]

On the other hand, the framers of the 1987 Constitution deliberately expanded this Court's power of judicial review to prevent courts from seeking refuge behind the political question doctrine and turning a blind eye to abuses committed by the other branches of government.[66]

This Court's expanded power of judicial review requires a prima facie showing of grave abuse of discretion by any government branch or instrumentality. This broad grant of power contrasts with the remedy of certiorari under Rule 65, which is limited to the review of judicial and quasi-judicial acts.[67] Nonetheless, this Court, by its own power to relax its rules, allowed Rule 65 to be used for petitions invoking the courts' expanded jurisdiction.[68]

Here, petitioner asserts that the Governance Commission committed grave abuse of discretion amounting to lack or excess of jurisdiction when it prevented respondents Benitez and Atty. Berberabe-Martinez, as the bank's President and Chairperson of the Board of Directors, respectively, from negotiating the

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[65] *Rep. of the Phils. v. Moldex Realty, Inc.*, 780 Phil. 553, 560 (2016) [Per *J.* Leonen, Second Division].

[66] See *J.* Leonen, Concurring Opinion in *Belgica, et al. v. Hon. Exec. Sec. Ochoa, Jr., et al.*, 721 Phil. 416, 670-671 (2013) [Per J. Perlas-Bernabe, *En Banc*], *citing* RECORDS OF THE CONSTITUTIONAL COMMISSION, Vol. I, July 10, 1986, No. 27.

[67] *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc., et al.*, 802 Phil. 116, 142 (2016) [Per *J.* Brion, *En Banc*].

[68] *Id.* at 138-139.

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economic provisions of the Collective Bargaining Agreement between petitioner and the bank.[69]

Petitioner claims that in filing its Petition for Certiorari under Rule 65, it has "no plain, speedy[,] and adequate remedy in the ordinary course of law which will promptly and immediately relieve them from the injurious effects of the unconstitutional and patently unwarranted and illegal acts of the Respondents."[70]

Petitioner is mistaken.

Rule 65, Section 1 of the Rules of Civil Procedure reads:

SECTION 1. Petition for Certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non- forum shopping as provided in the third paragraph of Section 3, Rule 46.

Thus, a writ of certiorari may only be issued when the following are alleged in the petition and proven:

(1) the writ is directed against a tribunal, a board[,] or any officer exercising judicial or quasi[-]judicial functions; (2) such tribunal, board[,] or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of

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[69] *Rollo*, p. 4.

[70] *Id*. at 3-4.

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jurisdiction; and (3) there is no appeal or any plain, speedy[,] and adequate remedy in the ordinary course of law.[71] (Citation omitted)

The Governance Commission was created under Republic Act No. 10149. It is attached to the Office of the President and is the "central advisory, monitoring, and oversight body with authority to formulate, implement[,] and coordinate policies"[72] relative to government-owned and controlled corporations. It has no judicial or quasi-judicial authority, as evidenced by its powers and functions[73] under the law. Under its charter, the Governance Commission is empowered to:

- oversee the selection and nomination of directors/trustees and maintain the quality of Board Governance;
- institutionalize transparency, accountability, financial viability and responsiveness in corporate performance by monitoring and evaluating GOCCs' performance;
- rationalize the Sector through streamlining, reorganization, merger, as well as recommending to the President of the Philippines the privatization or abolition of a GOCC; and
- establish compensation standards to ensure reasonable and competitive remuneration schemes that attract and retain the right talent.[74]

The Governance Commission possesses neither judicial nor quasi- judicial powers; thus, it cannot review or settle actual controversies or conflicting rights between dueling parties and enforce legally demandable rights. It is not a tribunal or board exercising judicial or quasi-judicial functions that may properly be the subject of a petition for certiorari.

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[71] *Land Bank of the Phils. v. Court of Appeals*, 456 Phil. 755, 784-785 (2003) [Per *J.* Callejo, Sr., Second Division].

[72] Rep. Act No. 10149 (2011), Ch. II, Sec. 5.

[73] Rep. Act No. 10149 (2011), Ch. II, Sec. 5.

[74] *Governance Commission for Government Owned and Controlled Corporations*, Governance Commission, < http://gcg.gov.ph/site/aboutus > (last accessed on January 14, 2019).

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Petitioner refers to the Governance Commission's February 5, 2013[75] and March 8, 2013[76] letters to substantiate its claim that the Governance Commission forbade respondents Benitez and Atty. Berberabe-Martinez from negotiating the economic terms of their Collective Bargaining Agreement. However, a careful review of the letters convinces this Court that they were merely advisory opinions, rendered in response to the queries of respondents Atty. Berberabe-Martinez and Benitez.

The February 5, 2013 letter read:

Gentlemen:

We write to formally inform you that pursuant to the terms of Republic Act (R.A.) No. 10149, the Governing Boards and Managements of all covered GOCCs, GFIs and GCE/GICPs are without legal authority to enter into negotiations for the economic terms of Collective Bargaining Agreements (CBAs); more so, approving CBAs, whether conditionally or unconditionally, that cover matters involving compensation, allowances, benefits and incentives.

"*Collective Bargaining*" covers matters that can be voluntarily agreed upon by the employer and employees. Presidential Decree (P.D.) No. 1597 and Joint Resolution (J.R.) No. 4 mandate that SSL exempt GOCCs, including Non-Chartered GOCCs, shall observe the policies, parameters and guidelines governing position classification, salary rates, categories and rates of allowances, benefits and incentives, prescribed by the President, and that **any** increase in the existing salary rates, as well as the grant of new allowances, benefits, and incentives in the rates thereof shall be subject to the approval of the President.

Executive Order No. 7 (s.2010) likewise provides for a moratorium on increases in the rates of salaries, and the grant of new allowances, incentives and other benefits, except for salary adjustments pursuant to Executive Order No. 811 (s. 2009) and Executive Order No. 900 (s. 2010), until specifically authorized by the President.

Pursuant to these, compensation matters **cannot** be voluntarily agreed upon by the Board with the union under a CBA, since such

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[75] *Rollo*, pp. 49-50.

[76] *Id*. at 58-74.

matters have to be subjected to policies, guidelines and parameters prescribed and approved by the President.

As you are aware of, Section 8 of R.A. No. 10149 mandates the Commission to develop a Compensation and Position Classification System (CPCS) that strikes a balance between reasonableness and competitiveness, and shall apply to ALL GOCCs, whether SSL-covered or SSL-exempt. The task of undertaking the development of a CPCS for all GOCCs has already commenced and is well underway being already on Phase III of its development. Pending however the formal promulgation and approval of the CPCS, the authority to approve or deny requests for any adjustment pertaining to compensation, additional incentives or benefits, remain with His Excellency.

In view of the foregoing, and pursuant to the fiduciary duties of the members of the Board of Directors and Officers, as well as the principles under R.A. No. 10149, the Commission takes this opportunity to inform Governing Boards and Management within the GOCC Sector of their lack of authority to enter into any negotiations for the economic terms of CBAs with their respective unions.[77] (Emphasis in the original, citation omitted)

A careful reading of the March 8, 2013 letter likewise demonstrates its advisory nature with no directive for respondents to refrain from negotiating with petitioner.

Further, petitioner failed to prove that it had no other "plain, speedy[,] and adequate remedy in the ordinary course of law"[78] aside from its present Petition. The Governance Commission is an attached agency of the Office of the President; hence, petitioner could have elevated the advisories to the Office of the President to question the Governance Commission's legal opinion.

Finally, it has not escaped this Court's attention that petitioner only impleaded respondent Villanueva in his capacity as chairperson of the Governance Commission, and not the four (4) other members of the Governance Commission.

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[77] *Id*. at 49-50.

[78] RULES OF COURT, Rule 65, Sec. 1 .

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The Governance Commission is composed of five (5) members. The chairperson, with a rank of Cabinet Secretary, and two (2) other members, with the rank of Undersecretary, are appointed by the President. The Department of Budget and Management and the Department of Finance Secretaries sit as *ex-officio* members.[79]

As a collegial body, all members of the Governance Commission should have been impleaded as indispensable parties in the Petition, since no final determination of the action can be reached without them.[80] As it is, petitioner's failure to implead all members of the Governance Commission should lead to the outright dismissal of this Petition as their non-inclusion is debilitating since this Court cannot exercise its juridical power when an indispensable party is not impleaded.[81]

II

Nonetheless, even if all the requirements for the issuance of a writ of certiorari were alleged and proven, and even if all the indispensable parties were impleaded, the closure of GSIS Family Bank has rendered the Petition moot. As seen in the Petition's prayer,[82] this Court is asked to direct GSIS Family Bank's representatives to perform positive acts:

> WHEREFORE, premises considered, Petitioner humbly prays that the Honorable Court rule in favor of the Petitioner and that a judgment be rendered:
>
> 1. Declaring GSIS Family Bank as a private bank and therefore outside the coverage of RA 10149;

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[79] Rep. Act No. 10149 (2011), Ch. II, Sec. 6.

[80] RULES OF COURT, Rule 3, Sec. 7 provides:

SECTION 7. Compulsory Joinder of Indispensable Parties. — Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

[81] *Caravan Travel and Tours International, Inc. v. Abejar*, 780 Phil. 509, 542 (2016) [Per *J.* Leonen, Second Division] *citing Lucman v. Malawi*, 540 Phil. 289, 302 (2006) [Per *J.* Tinga, Third Division].

[82] *Rollo*, p. 27.

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2. Ordering the [Governance Commission] to DESIST from further usurping into matters between the GSIS [Family Bank] and its employees;

3. *Directing GSIS [Family Bank] management to immediate[ly] commence negotiations with the petitioner for a Collective Bargaining Agreement (CBA)*covering the period retroactive January 01, 2012 to December 31, 2015;

4. *Ordering respondent GSIS Family Bank to fully comply with the terms and conditions of the existing [Collective Bargaining Agreement]* until a new [collective bargaining agreement] has been negotiated and signed, *by providing the benefits, allowances and incentives and other rightful claims, including the 2013 Christmas bonus, of the members of the Petitioner union[.]*[83] (Emphasis supplied)

A case is deemed moot when it ceases to present a justiciable controversy due to a supervening event. The lack of an actual or justiciable controversy means that the court has nothing to resolve, and will, in effect, only render an advisory opinion.[84]

Courts generally dismiss cases on the ground of mootness[85] unless any of the following instances are present: (1) grave constitutional violations; (2) exceptional character of the case; (3) paramount public interest; (4) the case presents an opportunity to guide the bench, the bar, and the public; or (5) the case is capable of repetition yet evading review.[86]

Despite GSIS Family Bank's closure, which has effectively rendered the case moot, this Court believes that there is a need to discuss the substantive issues of the case, as it presents an

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[83] *Id*. at 27.

[84] *Rep. of the Phils. v. Moldex Realty, Inc.*, 780 Phil. 553, 560 (2016) [Per *J* . Leonen, Second Division].

[85] *Prof. David v. Pres. Macapagal-Arroyo*, 522 Phil. 705, 754 (2006) [Per *J*. Sandoval-Gutierrez, *En Banc*].

[86] *Rep. of the Phils. v. Moldex Realty, Inc.*, 780 Phil. 553, 561 (2016) [Per *J*. Leonen, Second Division].

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opportunity to guide the bench and bar on how to resolve similar issues arising from similarly situated parties.

III

On February 4, 1986, to clarify which of the government entities could be classified as a government-owned or controlled corporation,[87] then President Ferdinand E. Marcos issued Presidential Decree No. 2029, which defined a government-owned or controlled corporation as follows:

> SECTION 2. Definition. — A government-owned or controlled corporation is a stock or a non-stock corporation, whether performing governmental or proprietary functions, which is directly chartered by a special law or if organized under the general corporation law is owned or controlled by the government directly, or indirectly through a parent corporation or subsidiary corporation, to the extent of at least a majority of its outstanding capital stock or of its outstanding voting capital stock;
>
> Provided, that a corporation organized under the general corporation law under private ownership at least a majority of the shares of stock of which were conveyed to a government financial institution, whether by a foreclosure or otherwise, or a subsidiary corporation of a government corporation organized exclusively to own and manage, or lease, or operate specific physical assets acquired by a government financial institution in satisfaction of debts incurred therewith, and which in any case by enunciated policy of the government is required to be disposed of to private ownership within a specified period of time, shall not be considered a government-owned or controlled corporation before such disposition and even if the ownership or control thereof is subsequently transferred to another government-owned or controlled corporation;
>
> Provided, further, that a corporation created by special law which is explicitly intended under that law for ultimate transfer to private ownership under certain specified conditions shall be considered a government-owned or controlled corporation, until it is transferred to private ownership; and
>
> Provided, finally, that a corporation that is authorized to be established by special law, but which is still required under that law to register with the Securities and Exchange Commission in order to acquire a juridical personality, shall not on the basis of the special

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law alone be considered a government-owned or controlled corporation.

On July 25, 1987, then President Corazon C. Aquino issued Executive Order No. 292 or the Administrative Code of 1987, which replaced the 1917 colonial period Administrative Code in effect then, and laid out in a "unified document the major structural, functional[,] and procedural principles and rules of governance[.]"[88] Section 2(13) of Executive Order No. 292 defined a government-owned or controlled corporation:

> SECTION 2. General Terms Defined. — Unless the specific words of the text, or the context as a whole, or a particular statute, shall require a different meaning:
>
> . . . . . .
>
> (13) Government-owned or controlled corporation refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either

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[87] Pres. Decree No. 2029 (1986). Third Whereas Clause provides:

> WHEREAS, the identification of which government entities shall be considered as government--owned or controlled corporations should now be undertaken on a consistent and identical basis, so that the appropriate service-wide supervisory agencies may be so guided[.]

[88] Exec. Order No. 292 (1987) provides:

> WHEREAS, the Administrative Code currently in force was first forged in 1917 when the relationship between the people and the government was defined by the colonial order then prevailing;
>
> WHEREAS, efforts to achieve an integrative and overall recodification of its provisions resulted in the Administrative Code of 1978 which, however, was never published and later expressly repealed;
>
> WHEREAS, the effectiveness of the Government will be enhanced by a new Administrative Code which incorporates in a unified document the major structural, functional and procedural principles and rules of governance; and
>
> WHEREAS, a new Administrative Code will be of optimum benefit to the people and Government officers and employees as it embodies changes in administrative structures and procedures designed to serve the people[.]

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> wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock: Provided, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations.

This definition was echoed in Section 3(o) of Republic Act No. 10149:

> SECTION 3. Definition of Terms. —
>
> . . . . . .
>
> (o) Government-Owned or -Controlled Corporation (GOCC) refers to any agency organized as a stock or nonstock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government of the Republic of the Philippines directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least a majority of its outstanding capital stock: Provided, however, That for purposes of this Act, the term "GOCC" shall include GICP/GCE and GFI as defined herein.

Thus, a government-owned or controlled corporation is: (1) established by original charter or through the general corporation law; (2) vested with functions relating to public need whether governmental or proprietary in nature; and (3) directly owned by the government or by its instrumentality, or where the government owns a majority of the outstanding capital stock. Possessing all three (3) attributes is necessary to be classified as a government-owned or controlled corporation.[89]

There is no doubt that GSIS Family Bank is a government-owned or controlled corporation since 99.55% of its outstanding

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[89] *Funa v. Manila Economic And Cultural Office, et al.*, 726 Phil. 63, 90 (2014) [Per *J* . Perez, *En Banc*].

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capital stock is owned and controlled by the Government Service Insurance System.

Petitioner cites this Court's ruling in *Phil. National Oil Company-Energy Dev't. Corp*.[90] to substantiate its claim that government-owned and controlled corporations without original charters, or those incorporated under the Corporation Code, are subject to the provisions of the Labor Code, and are thus free to negotiate economic terms with their employers.[91]

Petitioner is again mistaken.

Phil. National Oil Company-Energy Dev't. Corp. involved a decision of the Deputy Minister of Labor upholding his jurisdiction revoking a clearance to dismiss, earlier issued by the Ministry of Labor's Regional Office. The petitioner, despite its earlier application for such issuance, contested the Ministry of Labor's jurisdiction on the ground that it was a government-owned and controlled corporation.

In disposing of the petition, this Court noted that for purposes of coverage under the Civil Service Rules, it was only government-owned and controlled corporations with original charters that were covered:

> Under the laws then in force, employees of government-owned and/or controlled corporations were governed by the Civil Service Law and not by the Labor Code. Thus,
>
> Article 277 of the Labor Code (PD 442) then provided:
>
> "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 .. "
>
> In turn, the 1973 Constitution provided:
>
> "The Civil Service embraces every branch, agency, subdivision and instrumentality of the government, including

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[90] 256 Phil. 475 (1989) [Per *J*. Melencio-Herrera, Second Division].

[91] *Rollo*, pp. 16-17.

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government-owned or controlled corporations."

In *National Housing Corporation vs. Juco* (L-64313, January 17, 1985, 134 SCRA 172), we laid down the doctrine that employees of government-owned and/or controlled corporations, whether created by special law or formed as subsidiaries under the general Corporation Law, are governed by the Civil Service Law and not by the Labor Code.

However, the above doctrine has been supplanted by the present Constitution, which provides:

> "The Civil Service embraces all branches, subdivisions, instrumentalities and agencies of the Government, including government-owned or controlled corporations with original charters." (Article IX-B, Section 2 [1])

Thus, under the present state of the law, the test in determining whether a government-owned or controlled corporation is subject to the Civil Service Law is the manner of its creation such that government corporations created by special charter are subject to its provisions while those incorporated under the general Corporation Law are not within its coverage.[92]

However, what was in issue in *Phil. National Oil Company-Energy Dev't. Corp*.[93] was jurisdiction in relation to dismissal of employees. It had nothing to do with the obligation of the government-owned or controlled corporation to collectively bargain in good faith.

Similarly, *Galicto*[94] was a petition filed by an employee of the Philippine Health Insurance Corporation (Philhealth) challenging the validity of an Executive Order issued by the President. The Executive Order imposed a moratorium on increases in compensation and benefits to be given to employees, including government-owned and controlled corporations.[95]

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[92] *Phil. National Oil Company-Energy Dev't. Corp. v. Hon. Leogardo*, 256 Phil. 475, 477-478 (1989) [Per *J*. Melencio-Herrera, Second Division].

[93] 256 Phil. 475 (1989) [Per *J*. Melencio-Herrera, Second Division].

[94] 683 Phil. 141 (2012) [Per *J* . Brion, *En Banc*].

[95] *Id*. at 161-162.

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Unlike the present case, *Galicto* did not deal with the obligation, if any, of the management of government-owned or controlled corporations to bargain collectively with its employees in good faith.

Nonetheless, *Galicto* involved Philhealth, a corporation with an original charter, Republic Act No. 7875. More importantly, the case was dismissed due to the improper remedy,[96] lack of standing,[97] and procedural errors[98] of the petitioner. This Court also noted that while the case was pending, Republic Act No. 10149 was promulgated, providing statutory basis for the President to approve the Compensation and Position Classification System for government-owned and controlled corporations.[99]

Galicto did not rule on the legality of any provision of Republic Act No. 10149 as it was not raised as an issue. Further, *Galicto* dismissed the petition against then President Aquino for being moot.[100]

IV

The right of workers to self-organization, collective bargaining, and negotiations is guaranteed by the Constitution under Article XIII, Section 3:

> 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 processes affecting their rights and benefits as may be provided by law.

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[96] *Id*. at 165-170.

[97] *Id*. at 170-174.

[98] *Id*. at 174-175.

[99] *Id*. at 176-177.

[100] *Id*. at 175-178.

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The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

The right to self-organization is not limited to private employees and encompasses all workers in both the public and private sectors, as shown by the clear declaration in Article IX(B), Section 2(5) that "the right to self- organization shall not be denied to government employees." Article III, Section 8 of the Bill of Rights likewise states, "[t]he right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged."

While the right to self-organization is absolute, the right of government employees to collective bargaining and negotiation is subject to limitations.

Collective bargaining is a series of negotiations between an employer and a representative of the employees to regulate the various aspects of the employer-employee relationship such as working hours, working conditions, benefits, economic provisions, and others.

Relations between private employers and their employees are subject to the minimum requirements of wage laws, labor, and welfare legislation. Beyond these requirements, private employers and their employees are at liberty to establish the terms and conditions of their employment relationship. In contrast with the private sector, the terms and conditions of employment of government workers are fixed by the legislature; thus, the negotiable matters in the public sector are limited to terms and conditions of employment that are not fixed by law.[101]

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[101] *Alliance of Gov't. Workers (AGW), et al. v. The Honorable Minister of Labor, et al.*, 209 Phil. 1, 15 (1983) [Per *J.* Gutierrez, Jr., *En Banc*].

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Social Security System Employees Association v. Court of Appeals[102] explains that instead of a collective bargaining agreement or negotiation, government employees must course their petitions for a change in the terms and conditions of their employment through the Congress for the issuance of new laws, rules, or regulations to that effect:

> Government employees may, therefore, through their unions or associations, either petition the Congress for the betterment of the terms and conditions of employment which are within the ambit of legislation or negotiate with the appropriate government agencies for the improvement of those which are not fixed by law.[103]

In *PCSO v. Chairperson Pulido-Tan, et al.*,[104] the Commission on Audit disallowed the monthly cost of living allowance being received by Philippine Charity Sweepstakes Office's officials and employees.

This Court held that the Philippine Charity Sweepstakes Office's charter does not allow its Board complete liberty to set the salaries and benefits of its officials and employees. This Court emphasized that as a government-owned and controlled corporation, the Philippine Charity Sweepstakes Office is covered by the compensation and position standards issued by the Department of Budget and Management and applicable laws.[105]

PCSO underscored that the power of a government-owned or controlled corporation to fix salaries or allowances of its employees is subject to and must conform to the compensation and classification standards laid down by applicable law:

> Upon the effectivity of R.A. No. 6758, GOCCs like the PCSO are included in the Compensation and Position Classification System

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[102] 256 Phil. 1079 (1989) [Per *J*. Cortes, Third Division]

[103] *Id*. at 1089.

[104] 785 Phil. 266 (2016) [Per *J*. Peralta, *En Banc*].

[105] *Id*. at 275.

[106] *Id*. at 277-278.

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because Section 16 of the law repeals all laws, decrees, executive orders, corporate charters, and other issuances or parts thereof, that exempt agencies from the coverage of the System, or that authorize and fix position classification, salaries, pay rates or allowances of specified positions, or groups of officials and employees or of agencies, which are inconsistent with the System, including the *proviso* under Section 2 and Section 16 of P.D. No. 985.[106] (Citation omitted)

Republic Act No. 10149 defines a non-chartered government-owned or controlled corporation as a government-owned or controlled corporation that was organized and is operating under the Corporation Code.[107] It does not differentiate between chartered and non-chartered government-owned or controlled corporations; hence, its provisions apply equally to both:

SECTION 4. Coverage. — This Act shall be applicable to *all GOCCs, GICPs/GCEs, and government financial institutions, including their subsidiaries*, but excluding the Bangko Sentral ng Pilipinas, state universities and colleges, cooperatives, local water districts, economic zone authorities and research institutions: Provided, That in economic zone authorities and research institutions, the President shall appoint one-third (1/3) of the board members from the list submitted by the GCG. (Emphasis supplied)

Section 9 of Republic Act No. 10149 also categorically states, "Any law to the contrary notwithstanding, no [government-owned or controlled corporation] shall be exempt from the coverage of the Compensation and Position Classification System developed by the [Governance Commission] under this Act."

Furthermore, Republic Act No. 10149 directed the Governance Commission to develop a Compensation and Position Classification System, to be submitted for the President's approval, which shall apply to all officers and employees of government-owned or controlled corporations, whether chartered or non-chartered.[108]

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[107] Rep. Act No. 10149 (2011), Ch. I, Sec. 3(p).

[108] Rep. Act No. 10149 (2011), Ch. III, Sec. 8.

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On March 22, 2016, President Aquino issued Executive Order No. 203,[109] which approved the compensation and classification standards and the Index of Occupational Services Framework developed and submitted by the Governance Commission.

When it comes to collective bargaining agreements and collective negotiation agreements in government-owned or controlled corporations, Executive Order No. 203 unequivocally stated that while it recognized the right of workers to organize, bargain, and negotiate with their employers, "the Governing Boards of all covered [government-owned or controlled corporations], whether Chartered or Non-chartered, may not negotiate with their officers and employees the economic terms of their [collective bargaining agreements]."[110]

Thus, considering the existing law at the time, GSIS Family Bank could not be faulted for refusing to enter into a new collective bargaining agreement with petitioner as it lacked the authority to negotiate economic terms with its employees.[111] Unless directly challenged in the appropriate case and with a proper actual controversy, the constitutionality and validity of Republic Act No. 10149, as it applies to fully government-owned and controlled non-chartered corporations, prevail.

WHEREFORE, premises considered, the Petition is **DENIED.**

SO ORDERED.

Peralta (*Chairperson*), *Reyes, Jr., A., Hernando*, and *Carandang*[*], *JJ.*, concur.

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[109] Adopting a Compensation and Position Classification System (CPCS) and a General Index of Occupational Services (IOS) for the GOCC Sector Covered by Republic Act No. 10149 and for Other Purposes.

[110] Exec. Order No. 203 (2016), Sec. 2.

[111] *Rollo*, p. 68.

[*] Designated as additional member per Special Order No. 2624 dated November 28, 2018.