Republic of the Philippines
Supreme Court
Manila

**THIRD DIVISION**

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| **CHERYLL SANTOS LEUS,** Petitioner, | **G.R. No. 187226** |
| | Present: |
| - versus - | VELASCO, JR., *J.*, *Chairperson*, PERALTA, VILLARAMA, JR., REYES, and JARDELEZA, *JJ.* |
| **ST. SCHOLASTICA'S COLLEGE WESTGROVE and/or SR. EDNA QUIAMBAO, OSB,** Respondents. | Promulgated: January 28, 2015 |

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**DECISION**

**REYES, *J.*:**

Cheryll Santos Leus (petitioner) was hired by St. Scholastica's College Westgrove (SSCW), a Catholic educational institution, as a non-teaching personnel, engaged in pre-marital sexual relations, got pregnant out of wedlock, married the father of her child, and was dismissed by SSCW, in that order. The question that has to be resolved is whether the petitioner's conduct constitutes a ground for her dismissal.

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[1] dated September 24, 2008 and Resolution[2] dated March 2, 2009 issued by the Court of Appeals (CA) in CA-G.R. SP No. 100188, which affirmed the

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[1] Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Hakim S. Abdulwahid and Teresita Dy-Liacco Flores, concurring; *rollo*, pp. 148-156.

[2] Id. at 170-170A.

Resolutions dated February 28, 2007[3] and May 21, 2007[4] of the National Labor Relations Commission (NLRC) in NLRC CA No. 049222-06.

## The Facts

SSCW is a catholic and sectarian educational institution in Silang, Cavite. In May 2001, SSCW hired the petitioner as an Assistant to SSCW's Director of the Lay Apostolate and Community Outreach Directorate.

Sometime in 2003, the petitioner and her boyfriend conceived a child out of wedlock. When SSCW learned of the petitioner's pregnancy, Sr. Edna Quiambao (Sr. Quiambao), SSCW's Directress, advised her to file a resignation letter effective June 1, 2003. In response, the petitioner informed Sr. Quiambao that she would not resign from her employment just because she got pregnant without the benefit of marriage.[5]

On May 28, 2003, Sr. Quiambao formally directed the petitioner to explain in writing why she should not be dismissed for engaging in pre-marital sexual relations and getting pregnant as a result thereof, which amounts to serious misconduct and conduct unbecoming of an employee of a Catholic school.[6]

In a letter[7] dated May 31, 2003, the petitioner explained that her pregnancy out of wedlock does not amount to serious misconduct or conduct unbecoming of an employee. She averred that she is unaware of any school policy stating that being pregnant out of wedlock is considered as a serious misconduct and, thus, a ground for dismissal. Further, the petitioner requested a copy of SSCW's policy and guidelines so that she may better respond to the charge against her.

On June 2, 2003, Sr. Quiambao informed the petitioner that, pending the promulgation of a "Support Staff Handbook," SSCW follows the 1992 Manual of Regulations for Private Schools (1992 MRPS) on the causes for termination of employments; that Section 94(e) of the 1992 MRPS cites "disgraceful or immoral conduct" as a ground for dismissal in addition to the just causes for termination of employment provided under Article 282 of the Labor Code.[8]

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3 Penned by Commissioner Tito F. Genilo, with Presiding Commissioner Lourdes C. Javier and Commissioner Gregorio O. Bilog III, concurring; id. at 125-131.
4 Id. at 146-147.
5 Id. at 76.
6 Id. at 77.
7 Id. at 78.
8 Id. at 79.

On June 4, 2003, the petitioner, through counsel, sent Sr. Quiambao a letter,[9] which, in part, reads:

> To us, pre-marital sex between two consenting adults without legal impediment to marry each other who later on married each other does not fall within the contemplation of "disgraceful or immoral conduct" and "serious misconduct" of the Manual of Regulations for Private Schools and the Labor Code of the Philippines.
>
> Your argument that what happened to our client would set a bad example to the students and other employees of your school is speculative and is more imaginary than real. To dismiss her on that sole ground constitutes grave abuse of management prerogatives.
>
> Considering her untarnished service for two years, dismissing her with her present condition would also mean depriving her to be more secure in terms of financial capacity to sustain maternal needs.[10]

In a letter[11] dated June 6, 2003, SSCW, through counsel, maintained that pre-marital sexual relations, even if between two consenting adults without legal impediment to marry, is considered a disgraceful and immoral conduct or a serious misconduct, which are grounds for the termination of employment under the 1992 MRPS and the Labor Code. That SSCW, as a Catholic institution of learning, has the right to uphold the teaching of the Catholic Church and expect its employees to abide by the same. They further asserted that the petitioner's indiscretion is further aggravated by the fact that she is the Assistant to the Director of the Lay Apostolate and Community Outreach Directorate, a position of responsibility that the students look up to as role model. The petitioner was again directed to submit a written explanation on why she should not be dismissed.

On June 9, 2003, the petitioner informed Sr. Quiambao that she adopts her counsel's letter dated June 4, 2003 as her written explanation.[12]

Consequently, in her letter[13] dated June 11, 2003, Sr. Quiambao informed the petitioner that her employment with SSCW is terminated on the ground of serious misconduct. She stressed that pre-marital sexual relations between two consenting adults with no impediment to marry, even if they subsequently married, amounts to immoral conduct. She further pointed out that SSCW finds unacceptable the scandal brought about by the petitioner's pregnancy out of wedlock as it ran counter to the moral principles that SSCW stands for and teaches its students.

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9 Id. at 80.
10 Id.
11 Id. at 84-85.
12 Id. at 82.
13 Id. at 83.

Thereupon, the petitioner filed a complaint for illegal dismissal with the Regional Arbitration Branch of the NLRC in Quezon City against SSCW and Sr. Quiambao (respondents). In her position paper,[14] the petitioner claimed that SSCW gravely abused its management prerogative as there was no just cause for her dismissal. She maintained that her pregnancy out of wedlock cannot be considered as serious misconduct since the same is a purely private affair and not connected in any way with her duties as an employee of SSCW. Further, the petitioner averred that she and her boyfriend eventually got married even prior to her dismissal.

For their part, SSCW claimed that there was just cause to terminate the petitioner's employment with SSCW and that the same is a valid exercise of SSCW's management prerogative. They maintained that engaging in pre-marital sex, and getting pregnant as a result thereof, amounts to a disgraceful or immoral conduct, which is a ground for the dismissal of an employee under the 1992 MRPS.

They pointed out that SSCW is a Catholic educational institution, which caters exclusively to young girls; that SSCW would lose its credibility if it would maintain employees who do not live up to the values and teachings it inculcates to its students. SSCW further asserted that the petitioner, being an employee of a Catholic educational institution, should have strived to maintain the honor, dignity and reputation of SSCW as a Catholic school.[15]

## The Ruling of the Labor Arbiter

On February 28, 2006, the Labor Arbiter (LA) rendered a Decision,[16] in NLRC Case No. 6-17657-03-C which dismissed the complaint filed by the petitioner. The LA found that there was a valid ground for the petitioner's dismissal; that her pregnancy out of wedlock is considered as a "disgraceful and immoral conduct." The LA pointed out that, as an employee of a Catholic educational institution, the petitioner is expected to live up to the Catholic values taught by SSCW to its students. Likewise, the LA opined that:

> Further, a deep analysis of the facts would lead us to disagree with the complainant that she was dismissed simply because she violate[d] a Catholic [teaching]. It should not be taken in isolation but rather it should be analyzed in the light of the surrounding circumstances as a whole. We must also take into [consideration] the nature of her work and the nature of her employer-school. For us, it is not just an ordinary violation. It was committed by the complainant in an environment where her strict

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14 Id. at 60-73.
15 Id. at 86-94.
16 Rendered by LA Danna M. Castillon; id. at 104-110.

> adherence to the same is called for and where the reputation of the school is at stake. x x x.[17]

The LA further held that teachers and school employees, both in their official and personal conduct, must display exemplary behavior and act in a manner that is beyond reproach.

The petitioner appealed to the NLRC, insisting that there was no valid ground for the termination of her employment. She maintained that her pregnancy out of wedlock cannot be considered as "serious misconduct" under Article 282 of the Labor Code since the same was not of such a grave and aggravated character. She asserted that SSCW did not present any evidence to establish that her pregnancy out of wedlock indeed eroded the moral principles that it teaches its students.[18]

**The Ruling of the NLRC**

On February 28, 2007, the NLRC issued a Resolution,[19] which affirmed the LA Decision dated February 28, 2006. The NLRC pointed out that the termination of the employment of the personnel of private schools is governed by the 1992 MRPS; that Section 94(e) thereof cites "disgraceful or immoral conduct" as a just cause for dismissal, in addition to the grounds for termination of employment provided for under Article 282 of the Labor Code. The NLRC held that the petitioner's pregnancy out of wedlock is a "disgraceful or immoral conduct" within the contemplation of Section 94(e) of the 1992 MRPS and, thus, SSCW had a valid reason to terminate her employment.

The petitioner sought reconsideration[20] of the Resolution dated February 28, 2007 but it was denied by the NLRC in its Resolution[21] dated May 21, 2007.

Unperturbed, the petitioner filed a petition[22] for *certiorari* with the CA, alleging that the NLRC gravely abused its discretion in ruling that there was a valid ground for her dismissal. She maintained that pregnancy out of wedlock cannot be considered as a disgraceful or immoral conduct; that SSCW failed to prove that its students were indeed gravely scandalized by her pregnancy out of wedlock. She likewise asserted that the NLRC erred in applying Section 94(e) of the 1992 MRPS.

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17 Id. at 108.
18 Id. at 111-124.
19 Id. at 125-131.
20 Id. at 133-145.
21 Id. at 146-147.
22 Id. at 35-58.

## The Ruling of the CA

On September 24, 2008, the CA rendered the herein assailed Decision,[23] which denied the petition for *certiorari* filed by the petitioner. The CA held that it is the provisions of the 1992 MRPS and not the Labor Code which governs the termination of employment of teaching and non-teaching personnel of private schools, explaining that:

> It is a principle of statutory construction that where there are two statutes that apply to a particular case, that which was specially intended for the said case must prevail. Petitioner was employed by respondent private Catholic institution which undeniably follows the precepts or norms of conduct set forth by the Catholic Church. Accordingly, the Manual of Regulations for Private Schools followed by it must prevail over the Labor Code, a general statute. The Manual constitutes the private schools' Implementing Rules and Regulations of Batas Pambansa Blg. 232 or the Education Act of 1982. x x x.[24]

The CA further held that the petitioner's dismissal was a valid exercise of SSCW's management prerogative to discipline and impose penalties on erring employees pursuant to its policies, rules and regulations. The CA upheld the NLRC's conclusion that the petitioner's pregnancy out of wedlock is considered as a "disgraceful and immoral conduct" and, thus, a ground for dismissal under Section 94(e) of the 1992 MRPS. The CA likewise opined that the petitioner's pregnancy out of wedlock is scandalous *per se* given the work environment and social milieu that she was in, *viz*:

> Under Section 94 (e) of the [MRPS], and even under Article 282 (serious misconduct) of the Labor Code, "disgraceful and immoral conduct" is a basis for termination of employment.
>
> x x x x
>
> Petitioner contends that her pre-marital sexual relations with her boyfriend and her pregnancy prior to marriage was not disgraceful or immoral conduct sufficient for her dismissal because she was not a member of the school's faculty and there is no evidence that her pregnancy scandalized the school community.
>
> We are not persuaded. Petitioner's pregnancy prior to marriage is scandalous in itself given the work environment and social milieu she was in. Respondent school for young ladies precisely seeks to prevent its students from situations like this, inculcating in them strict moral values and standards. Being part of the institution, petitioner's private and public life could not be separated. Her admitted pre-marital sexual relations was a violation of private respondent's prescribed standards of conduct that views pre-marital sex as immoral because sex between a man and a woman must only take place within the bounds of marriage.

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23 Id. at 148-156.

24 Id. at 153.

> Finally, petitioner's dismissal is a valid exercise of the employer-school's management prerogative to discipline and impose penalties on erring employees pursuant to its policies, rules and regulations. x x x.[25] (Citations omitted)

The petitioner moved for reconsideration[26] but it was denied by the CA in its Resolution[27] dated March 2, 2009.

Hence, the instant petition.

## Issues

Essentially, the issues set forth by the petitioner for this Court's decision are the following: *first*, whether the CA committed reversible error in ruling that it is the 1992 MRPS and not the Labor Code that governs the termination of employment of teaching and non-teaching personnel of private schools; and *second*, whether the petitioner's pregnancy out of wedlock constitutes a valid ground to terminate her employment.

## The Ruling of the Court

The Court grants the petition.

## First Issue: Applicability of the 1992 MRPS

The petitioner contends that the CA, in ruling that there was a valid ground to dismiss her, erred in applying Section 94 of the 1992 MRPS. Essentially, she claims that the 1992 MRPS was issued by the Secretary of Education as the revised implementing rules and regulations of Batas Pambansa Bilang 232 (BP 232) or the "Education Act of 1982." That there is no provision in BP 232, which provides for the grounds for the termination of employment of teaching and non-teaching personnel of private schools. Thus, Section 94 of the 1992 MRPS, which provides for the causes of terminating an employment, is invalid as it "widened the scope and coverage" of BP 232.

The Court does not agree.

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25 Id. at 153-155.
26 Id. at 157-169.
27 Id. at 170-170A.

The Court notes that the argument against the validity of the 1992 MRPS, specifically Section 94 thereof, is raised by the petitioner for the first time in the instant petition for review. Nowhere in the proceedings before the LA, the NLRC or the CA did the petitioner assail the validity of the provisions of the 1992 MRPS.

"It is well established that issues raised for the first time on appeal and not raised in the proceedings in the lower court are barred by estoppel. Points of law, theories, issues, and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. To consider the alleged facts and arguments belatedly raised would amount to trampling on the basic principles of fair play, justice, and due process."[28]

In any case, even if the Court were to disregard the petitioner's belated claim of the invalidity of the 1992 MRPS, the Court still finds the same untenable.

The 1992 MRPS, the regulation in force at the time of the instant controversy, was issued by the Secretary of Education pursuant to BP 232. Section 70[29] of BP 232 vests the Secretary of Education with the authority to issue rules and regulations to implement the provisions of BP 232. Concomitantly, Section 57[30] specifically empowers the Department of Education to promulgate rules and regulations necessary for the administration, supervision and regulation of the educational system in accordance with the declared policy of BP 232.

The qualifications of teaching and non-teaching personnel of private schools, as well as the causes for the termination of their employment, are an integral aspect of the educational system of private schools. Indubitably, ensuring that the teaching and non-teaching personnel of private schools are not only qualified, but competent and efficient as well goes hand in hand with the declared objective of BP 232 – establishing and maintaining relevant quality education.[31] It is thus within the authority of the Secretary of Education to issue a rule, which provides for the dismissal of teaching and non-teaching personnel of private schools based on their incompetence, inefficiency, or some other disqualification.

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28 *Ayala Land, Inc. v. Castillo*, G.R. No. 178110, June 15, 2011, 652 SCRA 143, 158.

29 Sec. 70. *Rule-making Authority* - The Minister Education, Culture and Sports charged with the administration and enforcement of this Act, shall promulgate the necessary implementing rules and regulations.

30 Sec. 57. *Functions and Powers of the Ministry* - The Ministry shall:

x x x x

3. Promulgate rules and regulations necessary for the administration, supervision and regulation of the educational system in accordance with declared policy;

x x x x

31 Sec. 3 of BP 232.

Moreover, Section 69 of BP 232 specifically authorizes the Secretary of Education to "prescribe and impose such administrative sanction as he may deem reasonable and appropriate in the implementing rules and regulations" for the "[g]ross inefficiency of the teaching or non-teaching personnel" of private schools.[32] Accordingly, contrary to the petitioner's claim, the Court sees no reason to invalidate the provisions of the 1992 MRPS, specifically Section 94 thereof.

**Second Issue: Validity of the Petitioner's Dismissal**

The validity of the petitioner's dismissal hinges on the determination of whether pregnancy out of wedlock by an employee of a catholic educational institution is a cause for the termination of her employment.

In resolving the foregoing question, the Court will assess the matter from a strictly neutral and secular point of view – the relationship between SSCW as employer and the petitioner as an employee, the causes provided for by law in the termination of such relationship, and the evidence on record. The ground cited for the petitioner's dismissal, *i.e.*, pre-marital sexual relations and, consequently, pregnancy out of wedlock, will be assessed as to whether the same constitutes a valid ground for dismissal pursuant to Section 94(e) of the 1992 MRPS.

***The standard of review in a Rule 45 petition from the CA decision in labor cases.***

In a petition for review under Rule 45 of the Rules of Court, such as the instant petition, where the CA's disposition in a labor case is sought to be calibrated, the Court's review is quite limited. In ruling for legal correctness, the Court has to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; the Court has to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.[33]

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[32] Sec. 69. *Administrative Sanction* - The Minister of Education, Culture and Sports may prescribe and impose such administrative sanction as he may deem reasonable and appropriate in the implementing rules and regulations promulgated pursuant to this Act for any of the following causes:

x x x x

2. Gross inefficiency of the teaching or non-teaching personnel;

x x x x

[33] *Montoya v. Transmed Manila Corp./Mr. Ellena, et al.*, 613 Phil. 696, 707 (2009).

The phrase "grave abuse of discretion" is well-defined in the Court's jurisprudence. It exists where an act of a court or tribunal is performed with a capricious or whimsical exercise of judgment equivalent to lack of jurisdiction.[34] The determination of the presence or absence of grave abuse of discretion does not include an inquiry into the correctness of the evaluation of evidence, which was the basis of the labor agency in reaching its conclusion.[35]

Nevertheless, while a *certiorari* proceeding does not strictly include an inquiry as to the correctness of the evaluation of evidence (that was the basis of the labor tribunals in determining their conclusion), the incorrectness of its evidentiary evaluation should not result in negating the requirement of substantial evidence. **Indeed, when there is a showing that the findings or conclusions, drawn from the same pieces of evidence, were arrived at arbitrarily or in disregard of the evidence on record, they may be reviewed by the courts.** In particular, the CA can grant the petition for *certiorari* if it finds that the NLRC, in its assailed decision or resolution, made a factual finding not supported by substantial evidence. A decision that is not supported by substantial evidence is definitely a decision tainted with grave abuse of discretion.[36]

***The labor tribunals' respective conclusions that the petitioner's pregnancy is a "disgraceful or immoral conduct" were arrived at arbitrarily.***

The CA and the labor tribunals affirmed the validity of the petitioner's dismissal pursuant to Section 94(e) of the 1992 MRPS, which provides that:

> Sec. 94. Causes of Terminating Employment – In addition to the just causes enumerated in the Labor Code, the employment of school personnel, including faculty, may be terminated for any of the following causes:
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> x x x x
>
> e. Disgraceful or immoral conduct;
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> x x x x

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34 *Jinalinan Technical School, Inc. v. NLRC (Fourth Div.)*, 530 Phil. 77, 82 (2006).

35 *See G&S Transport Corporation v. Infante*, 559 Phil. 701, 709 (2007).

36 *See* Concurring and Dissenting Opinion, Brion, *J., INC Shipmanagement, Inc. v. Moradas*, G.R. No. 178564, January 15, 2014, 713 SCRA 475, 499-500; *Maralit v. PNB*, 613 Phil. 270, 288-289 (2009).

The labor tribunals concluded that the petitioner's pregnancy out of wedlock, *per se*, is "disgraceful and immoral" considering that she is employed in a Catholic educational institution. In arriving at such conclusion, the labor tribunals merely assessed the fact of the petitioner's pregnancy *vis-à-vis* the totality of the circumstances surrounding the same.

However, the Court finds no substantial evidence to support the aforementioned conclusion arrived at by the labor tribunals. The fact of the petitioner's pregnancy out of wedlock, without more, is not enough to characterize the petitioner's conduct as disgraceful or immoral. There must be substantial evidence to establish that pre-marital sexual relations and, consequently, pregnancy out of wedlock, are indeed considered disgraceful or immoral.

***The totality of the circumstances surrounding the conduct alleged to be disgraceful or immoral must be assessed against the prevailing norms of conduct.***

In *Chua-Qua v. Clave*,[37] the Court stressed that to constitute immorality, the circumstances of each particular case must be holistically considered and **evaluated in light of the prevailing norms of conduct** and applicable laws.[38] Otherwise stated, it is not the totality of the circumstances surrounding the conduct *per se* that determines whether the same is disgraceful or immoral, but the conduct that is generally accepted by society as respectable or moral. If the conduct does not conform to what society generally views as respectable or moral, then the conduct is considered as disgraceful or immoral. Tersely put, substantial evidence must be presented, which would establish that a particular conduct, viewed in light of the prevailing norms of conduct, is considered disgraceful or immoral.

Thus, the determination of whether a conduct is disgraceful or immoral involves a two-step process: *first*, a consideration of the totality of the circumstances surrounding the conduct; and *second*, an assessment of the said circumstances *vis-à-vis* the prevailing norms of conduct, *i.e.*, what the society generally considers moral and respectable.

That the petitioner was employed by a Catholic educational institution *per se* does not absolutely determine whether her pregnancy out of wedlock is disgraceful or immoral. There is still a necessity to determine whether the petitioner's pregnancy out of wedlock is considered disgraceful or immoral in accordance with the prevailing norms of conduct.

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37 G.R. No. 49549, August 30, 1990, 189 SCRA 117.

38 Id. at 124.

***Public and secular morality should determine the prevailing norms of conduct, not religious morality.***

However, determining what the prevailing norms of conduct are considered disgraceful or immoral is not an easy task. An individual's perception of what is moral or respectable is a confluence of a myriad of influences, such as religion, family, social status, and a cacophony of others. In this regard, the Court's ratiocination in *Estrada v. Escritor*[39] is instructive.

In *Estrada*, an administrative case against a court interpreter charged with disgraceful and immoral conduct, the Court stressed that in determining whether a particular conduct can be considered as disgraceful and immoral, the distinction between public and secular morality on the one hand, and religious morality, on the other, should be kept in mind.[40] That the distinction between public and secular morality and religious morality is important because the jurisdiction of the Court extends only to public and secular morality.[41] The Court further explained that:

> **The morality referred to in the law is public and necessarily secular, not religious** x x x. "Religious teachings as expressed in public debate may influence the civil public order but public moral disputes may be resolved only on grounds articulable in secular terms." **Otherwise, if government relies upon religious beliefs in formulating public policies and morals, the resulting policies and morals would require conformity to what some might regard as religious programs or agenda.** The non-believers would therefore be compelled to conform to a standard of conduct buttressed by a religious belief, *i.e.*, to a "compelled religion," anathema to religious freedom. Likewise, if government based its actions upon religious beliefs, it would tacitly approve or endorse that belief and thereby also tacitly disapprove contrary religious or non-religious views that would not support the policy. As a result, government will not provide full religious freedom for all its citizens, or even make it appear that those whose beliefs are disapproved are second-class citizens. Expansive religious freedom therefore requires that government be neutral in matters of religion; governmental reliance upon religious justification is inconsistent with this policy of neutrality.
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> **In other words, government action, including its proscription of immorality as expressed in criminal law like concubinage, must have a secular purpose. That is, the government proscribes this conduct because it is "detrimental (or dangerous) to those conditions upon which depend the existence and progress of human society" and not because the conduct is proscribed by the beliefs of one religion or the other.** Although admittedly, moral judgments based on religion might

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39 455 Phil. 411 (2003).
40 Id. at 587-588.
41 Id. at 591.

> have a compelling influence on those engaged in public deliberations over what actions would be considered a moral disapprobation punishable by law. After all, they might also be adherents of a religion and thus have religious opinions and moral codes with a compelling influence on them; the human mind endeavors to regulate the temporal and spiritual institutions of society in a uniform manner, harmonizing earth with heaven. **Succinctly put, a law could be religious or Kantian or Aquinian or utilitarian in its deepest roots, but it must have an articulable and discernible secular purpose and justification to pass scrutiny of the religion clauses.** x x x.[42] (Citations omitted and emphases ours)

Accordingly, when the law speaks of immoral or, necessarily, disgraceful conduct, it pertains to public and secular morality; it refers to those conducts which are proscribed because they are **detrimental to conditions upon which depend the existence and progress of human society**. Thus, in *Anonymous v. Radam*,[43] an administrative case involving a court utility worker likewise charged with disgraceful and immoral conduct, applying the doctrines laid down in *Estrada*, the Court held that:

> **For a particular conduct to constitute "disgraceful and immoral" behavior under civil service laws, it must be regulated on account of the concerns of public and secular morality. It cannot be judged based on personal bias, specifically those colored by particular mores. Nor should it be grounded on "cultural" values not convincingly demonstrated to have been recognized in the realm of public policy expressed in the Constitution and the laws.** At the same time, the constitutionally guaranteed rights (such as the right to privacy) should be observed to the extent that they protect behavior that may be frowned upon by the majority.
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> Under these tests, two things may be concluded from the fact that an unmarried woman gives birth out of wedlock:
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> (1) **if the father of the child is himself unmarried, the woman is not ordinarily administratively liable for disgraceful and immoral conduct.** It may be a not-so-ideal situation and may cause complications for both mother and child but it does not give cause for administrative sanction. **There is no law which penalizes an unmarried mother under those circumstances by reason of her sexual conduct or proscribes the consensual sexual activity between two unmarried persons. Neither does the situation contravene any fundamental state policy as expressed in the Constitution, a document that accommodates various belief systems irrespective of dogmatic origins.**
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> (2) **if the father of the child born out of wedlock is himself married to a woman other than the mother, then there is a cause for administrative sanction against either the**

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42 Id. at 588-590.

43 565 Phil. 321 (2007).

> **father or the mother. In such a case, the "disgraceful and immoral conduct" consists of having extramarital relations with a married person.** The sanctity of marriage is constitutionally recognized and likewise affirmed by our statutes as a special contract of permanent union. Accordingly, judicial employees have been sanctioned for their dalliances with married persons or for their own betrayals of the marital vow of fidelity.
>
> In this case, it was not disputed that, like respondent, the father of her child was unmarried. Therefore, respondent cannot be held liable for disgraceful and immoral conduct simply because she gave birth to the child Christian Jeon out of wedlock.[44] (Citations omitted and emphases ours)

Both *Estrada* and *Radam* are administrative cases against employees in the civil service. The Court, however, sees no reason not to apply the doctrines enunciated in *Estrada* and *Radam* in the instant case. *Estrada* and *Radam* also required the Court to delineate what conducts are considered disgraceful and/or immoral as would constitute a ground for dismissal. More importantly, as in the said administrative cases, the instant case involves an employee's security of tenure; this case likewise concerns employment, which is not merely a specie of property right, but also the means by which the employee and those who depend on him live.[45]

It bears stressing that the right of an employee to security of tenure is protected by the Constitution. Perfunctorily, a regular employee may not be dismissed unless for cause provided under the Labor Code and other relevant laws, in this case, the 1992 MRPS. As stated above, when the law refers to morality, it necessarily pertains to public and secular morality and not religious morality. Thus, the proscription against "disgraceful or immoral conduct" under Section 94(e) of the 1992 MRPS, which is made as a cause for dismissal, must necessarily refer to public and secular morality. Accordingly, in order for a conduct to be considered as disgraceful or immoral, it must be "'detrimental (or dangerous) to those conditions upon which depend the existence and progress of human society' and not because the conduct is proscribed by the beliefs of one religion or the other."

Thus, in *Santos v. NLRC,*[46] the Court upheld the dismissal of a teacher who had an extra-marital affair with his co-teacher, who is likewise married, on the ground of disgraceful and immoral conduct under Section 94(e) of the 1992 MRPS. The Court pointed out that extra-marital affair is considered as a disgraceful and immoral conduct is an afront to the sanctity of marriage, which is a basic institution of society, *viz*:

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44 Id. at 327-328.
45 Id. at 329.
46 350 Phil. 560 (1998).

> We cannot overemphasize that having an extra-marital affair is an afront to the sanctity of marriage, which is a basic institution of society. Even our Family Code provides that husband and wife must live together, observe mutual love, respect and fidelity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Our laws, in implementing this constitutional edict on marriage and the family underscore their permanence, inviolability and solidarity.[47]

***The petitioner's pregnancy out of wedlock is not a disgraceful or immoral conduct since she and the father of her child have no impediment to marry each other.***

In stark contrast to *Santos*, the Court does not find any circumstance in this case which would lead the Court to conclude that the petitioner committed a disgraceful or immoral conduct. It bears stressing that the petitioner and her boyfriend, at the time they conceived a child, had no legal impediment to marry. Indeed, even prior to her dismissal, the petitioner married her boyfriend, the father of her child. As the Court held in *Radam*, there is no law which penalizes an unmarried mother by reason of her sexual conduct or proscribes the consensual sexual activity between two unmarried persons; that neither does such situation contravene any fundamental state policy enshrined in the Constitution.

Admittedly, the petitioner is employed in an educational institution where the teachings and doctrines of the Catholic Church, including that on pre-marital sexual relations, is strictly upheld and taught to the students. That her indiscretion, which resulted in her pregnancy out of wedlock, is anathema to the doctrines of the Catholic Church. However, viewed against the prevailing norms of conduct, the petitioner's conduct cannot be considered as disgraceful or immoral; such conduct is not denounced by public and secular morality. It may be an unusual arrangement, but it certainly is not disgraceful or immoral within the contemplation of the law.

To stress, pre-marital sexual relations between two consenting adults who have no impediment to marry each other, and, consequently, conceiving a child out of wedlock, gauged from a purely public and secular view of morality, does not amount to a disgraceful or immoral conduct under Section 94(e) of the 1992 MRPS.

Accordingly, the labor tribunals erred in upholding the validity of the petitioner's dismissal. The labor tribunals arbitrarily relied solely on the circumstances surrounding the petitioner's pregnancy and its supposed effect

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[47] Id. at 569.

on SSCW and its students without evaluating whether the petitioner's conduct is indeed considered disgraceful or immoral in view of the prevailing norms of conduct. In this regard, the labor tribunals' respective haphazard evaluation of the evidence amounts to grave abuse of discretion, which the Court will rectify.

The labor tribunals' finding that the petitioner's pregnancy out of wedlock despite the absence of substantial evidence is not only arbitrary, but a grave abuse of discretion, which should have been set right by the CA.

***There is no substantial evidence to prove that the petitioner's pregnancy out of wedlock caused grave scandal to SSCW and its students.***

SSCW claimed that the petitioner was primarily dismissed because her pregnancy out of wedlock caused grave scandal to SSCW and its students. That the scandal brought about by the petitioner's indiscretion prompted them to dismiss her. The LA upheld the respondents' claim, stating that:

> In this particular case, an "objective" and "rational evaluation" of the facts and circumstances obtaining in this case would lead us to focus our attention x x x **on the impact of the act committed by the complainant**. The act of the complainant x x x **eroded the moral principles being taught and project[ed] by the respondent [C]atholic school to their young lady students**.[48] (Emphasis in the original)

On the other hand, the NLRC opined that:

> In the instant case, when the complainant-appellant was already conceiving a child even before she got married, such is considered a shameful and scandalous behavior, inimical to public welfare and policy. **It eroded the moral doctrines which the respondent Catholic school, an exclusive school for girls, is teaching the young girls. Thus, when the respondent-appellee school terminated complainant-appellant's services, it was a valid exercise of its management prerogative.** Whether or not she was a teacher is of no moment. There is no separate set of rules for non-teaching personnel. Respondents-appellees uphold the teachings of the Catholic Church on pre-marital sex and that the complainant-appellant as an employee of the school was expected to abide by this basic principle and to live up with the standards of their purely Catholic values. Her subsequent marriage did not take away the fact that she had engaged in pre-marital sex which the respondent-appellee school

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48 *Rollo*, p. 107.

> denounces as the same is opposed to the teachings and doctrines it espouses.[49] (Emphasis ours)

Contrary to the labor tribunals' declarations, the Court finds that SSCW failed to adduce substantial evidence to prove that the petitioner's indiscretion indeed caused grave scandal to SSCW and its students. Other than the SSCW's bare allegation, the records are bereft of any evidence that would convincingly prove that the petitioner's conduct indeed adversely affected SSCW's integrity in teaching the moral doctrines, which it stands for. The petitioner is only a non-teaching personnel; her interaction with SSCW's students is very limited. It is thus quite impossible that her pregnancy out of wedlock caused such a grave scandal, as claimed by SSCW, as to warrant her dismissal.

Settled is the rule that in termination cases, the burden of proving that the dismissal of the employees was for a valid and authorized cause rests on the employer. It is incumbent upon the employer to show by substantial evidence that the termination of the employment of the employees was validly made and failure to discharge that duty would mean that the dismissal is not justified and therefore illegal.[50] "Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise."[51]

Indubitably, bare allegations do not amount to substantial evidence. Considering that the respondents failed to adduce substantial evidence to prove their asserted cause for the petitioner's dismissal, the labor tribunals should not have upheld their allegations hook, line and sinker. The labor tribunals' respective findings, which were arrived at *sans* any substantial evidence, amounts to a grave abuse of discretion, which the CA should have rectified. "Security of tenure is a right which may not be denied on mere speculation of any unclear and nebulous basis."[52]

***The petitioner's dismissal is not a valid exercise of SSCW's management prerogative.***

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49 Id. at 129-130.

50 *Seven Star Textile Company v. Dy*, 541 Phil. 468, 479 (2007).

51 *Hon. Ombudsman Marcelo v. Bungubung, et al*., 575 Phil. 538, 556 (2008), citing *Montemayor v. Bundalian*, 453 Phil. 158, 167 (2003).

52 *Escareal v. National Labor Relations Commission*, G.R. No. 99359, September 2, 1992, 213 SCRA 472, 489.

The CA belabored the management prerogative of SSCW to discipline its employees. The CA opined that the petitioner's dismissal is a valid exercise of management prerogative to impose penalties on erring employees pursuant to its policies, rules and regulations.

The Court does not agree.

The Court has held that "management is free to regulate, according to its own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place and manner of work, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay off of workers and discipline, dismissal and recall of workers. The exercise of management prerogative, however, is not absolute as it must be exercised in good faith and with due regard to the rights of labor." Management cannot exercise its prerogative in a cruel, repressive, or despotic manner.[53]

SSCW, as employer, undeniably has the right to discipline its employees and, if need be, dismiss them if there is a valid cause to do so. However, as already explained, there is no cause to dismiss the petitioner. Her conduct is not considered by law as disgraceful or immoral. Further, the respondents themselves have admitted that SSCW, at the time of the controversy, does not have any policy or rule against an employee who engages in pre-marital sexual relations and conceives a child as a result thereof. There being no valid basis in law or even in SSCW's policy and rules, SSCW's dismissal of the petitioner is despotic and arbitrary and, thus, not a valid exercise of management prerogative.

In sum, the Court finds that the petitioner was illegally dismissed as there was no just cause for the termination of her employment. SSCW failed to adduce substantial evidence to establish that the petitioner's conduct, *i.e.*, engaging in pre-marital sexual relations and conceiving a child out of wedlock, assessed in light of the prevailing norms of conduct, is considered disgraceful or immoral. The labor tribunals gravely abused their discretion in upholding the validity of the petitioner's dismissal as the charge against the petitioner lay not on substantial evidence, but on the bare allegations of SSCW. In turn, the CA committed reversible error in upholding the validity of the petitioner's dismissal, failing to recognize that the labor tribunals gravely abused their discretion in ruling for the respondents.

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53 *See Andrada v. National Labor Relations Commission*, 565 Phil. 821, 839 (2007).

***The petitioner is entitled to separation pay, in lieu of actual reinstatement, full backwages and attorney's fees, but not to moral and exemplary damages.***

Having established that the petitioner was illegally dismissed, the Court now determines the reliefs that she is entitled to and their extent. Under the law and prevailing jurisprudence, "an illegally dismissed employee is entitled to reinstatement as a matter of right."[54] Aside from the instances provided under Articles 283[55] and 284[56] of the Labor Code, separation pay is, however, granted when reinstatement is no longer feasible because of strained relations between the employer and the employee. In cases of illegal dismissal, the accepted doctrine is that separation pay is available in lieu of reinstatement when the latter recourse is no longer practical or in the best interest of the parties.[57]

In *Divine Word High School v. NLRC*,[58] the Court ordered the employer Catholic school to pay the illegally dismissed high school teacher separation pay in lieu of actual reinstatement since her continued presence as a teacher in the school "may well be met with antipathy and antagonism by some sectors in the school community."[59]

In view of the particular circumstances of this case, it would be more prudent to direct SSCW to pay the petitioner separation pay in lieu of actual reinstatement. The continued employment of the petitioner with SSCW would only serve to intensify the atmosphere of antipathy and antagonism between the parties. Consequently, the Court awards separation pay to the petitioner equivalent to one (1) month pay for every year of service, with a

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54 *Quijano v. Mercury Drug Corporation*, 354 Phil. 112, 121 (1998).

55 Article 283. *Closure of establishment and reduction of personnel*. The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

56 Article 284. *Disease as ground for termination*. An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

57 *Leopard Security and Investigation Agency v. Quitoy*, G.R. No. 186344, February 20, 2013, 691 SCRA 440, 450-451.

58 227 Phil. 322 (1986).

59 Id. at 326.

fraction of at least six (6) months considered as one (1) whole year, from the time of her illegal dismissal up to the finality of this judgment, as an alternative to reinstatement.

Also, "employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement but if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision."[60] Accordingly, the petitioner is entitled to an award of full backwages from the time she was illegally dismissed up to the finality of this decision.

Nevertheless, the petitioner is not entitled to moral and exemplary damages. "A dismissed employee is entitled to moral damages when the dismissal is attended by bad faith or fraud or constitutes an act oppressive to labor, or is done in a manner contrary to good morals, good customs or public policy. Exemplary damages may be awarded if the dismissal is effected in a wanton, oppressive or malevolent manner."[61]

"Bad faith, under the law, does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, or a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud."[62]

"It must be noted that the burden of proving bad faith rests on the one alleging it"[63] since basic is the principle that good faith is presumed and he who alleges bad faith has the duty to prove the same.[64] "*Allegations of bad faith and fraud must be proved by clear and convincing evidence*."[65]

The records of this case are bereft of any clear and convincing evidence showing that the respondents acted in bad faith or in a wanton or fraudulent manner in dismissing the petitioner. That the petitioner was illegally dismissed is insufficient to prove bad faith. A dismissal may be contrary to law but by itself alone, it does not establish bad faith to entitle the dismissed employee to moral damages. The award of moral and

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60 *Coca-Cola Bottlers Phils., Inc. v. del Villar*, 646 Phil. 587, 615 (2010).
61 *Quadra v. Court of Appeals*, 529 Phil. 218, 223-224 (2006).
62 *Nazareno, et al. v. City of Dumaguete*, 607 Phil. 768, 804 (2009).
63 *United Claimants Association of NEA (UNICAN) v. National Electrification Administration (NEA)*, G.R. No. 187107, January 31, 2012, 664 SCRA 483, 494.
64 *Culili v. Eastern Telecommunications Philippines, Inc.*, G.R. No. 165381, February 9, 2011, 642 SCRA 338, 361.
65 *Palada v. Solidbank Corporation*, G.R. No. 172227, June 29, 2011, 653 SCRA 10, 11.

exemplary damages cannot be justified solely upon the premise that the employer dismissed his employee without cause.[66]

However, the petitioner is entitled to attorney's fees in the amount of 10% of the total monetary award pursuant to Article 111[67] of the Labor Code. "It is settled that where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable."[68]

Finally, legal interest shall be imposed on the monetary awards herein granted at the rate of six percent (6%) *per annum* from the finality of this judgment until fully paid.[69]

**WHEREFORE**, in consideration of the foregoing disquisitions, the petition is **GRANTED**. The Decision dated September 24, 2008 and Resolution dated March 2, 2009 of the Court of Appeals in CA-G.R. SP No. 100188 are hereby **REVERSED** and **SET ASIDE**.

The respondent, St. Scholastica's College Westgrove, is hereby declared guilty of illegal dismissal and is hereby **ORDERED** to pay the petitioner, Cheryll Santos Leus, the following: (a) separation pay in lieu of actual reinstatement equivalent to one (1) month pay for every year of service, with a fraction of at least six (6) months considered as one (1) whole year from the time of her dismissal up to the finality of this Decision; (b) full backwages from the time of her illegal dismissal up to the finality of this Decision; and (c) attorney's fees equivalent to ten percent (10%) of the total monetary award. The monetary awards herein granted shall earn legal interest at the rate of six percent (6%) *per annum* from the date of the finality of this Decision until fully paid. The case is **REMANDED** to the Labor Arbiter for the computation of petitioner's monetary awards.

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66 *See Lambert Pawnbrokers and Jewelry Corporation v. Binamira*, G.R. No. 170464, July 12, 2010, 624 SCRA 705, 720.

67 Art. 111. *Attorney's Fees*.

(a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

(b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed ten percent of the amount of wages recovered.

68 *Lambert Pawnbrokers and Jewelry Corporation v. Binamira*, supra note 65, at 721.

69 *See Garza v. Coca-Cola Bottlers Philippines, Inc.*, G.R. No. 180972, January 20, 2014, 714 SCRA 251, 274-275; *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 458.

**SO ORDERED.**

**BIENVENIDO L. REYES**
Associate Justice

**WE CONCUR:**

**PRESBITERO J. VELASCO, JR.**
Associate Justice
Chairperson

**DIOSDADO M. PERALTA**
Associate Justice

**MARTIN S. VILLARAMA, JR.**
Associate Justice

**FRANCIS H. JARDELEZA**
Associate Justice

## ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**PRESBITERO J. VELASCO, JR.**
Associate Justice
Chairperson, Third Division

# CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**MARIA LOURDES P. A. SERENO**
Chief Justice