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

Promulgated:

July 28, 2015

SEPARATE OPINION

BRION, *J.*:

I write this Separate Opinion to present an alternative approach in resolving the present case. This alternative approach discusses (and raises questions about) the procedure that this Court observes in taking ***jurisdiction over petitions questioning quasi-legislative acts***. In my view, the attendant facts of the present case and the *ponencia*'s approach aptly illustrate the need to revisit our present approach.

In recent years, we have been relaxing the *certiorari* requirements of Rule 65 of the Rules of Court[1] to give due course to *certiorari* petitions assailing quasi-legislative acts. Awareness of the impact of this trend is crucial, since we can only act on the basis of the "judicial power" granted to us by the Constitution. In blunter terms, our present approach is necessarily rooted in, and must be consistent with, the constitutional definition of judicial power.

Judicial power, as defined under Section 1, Article VIII of the 1987 Constitution, 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.*"

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[1] Specifically, Rule 65, Section 1 on *Certiorari*, and Section 2 on Prohibition, viz.:

> Section 1. Petition for certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess 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.
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> Section 2. Petition for prohibition. — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are 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 other 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 commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.
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Thus, in determining whether the Court should take jurisdiction over a case, it must, necessarily, first determine whether there is an ***actual controversy*** in which the Court can grant the appropriate relief through its judgment. This may involve ***private rights*** that are legally demandable and enforceable, or ***public rights***, which involve the nullification of a governmental act that had been exercised without, or in excess of its, jurisdiction.

At present, we have been allowing petitions for *certiorari* and prohibition to assail a quasi-legislative act whenever we find a paramount importance in deciding the petitions.

This approach, in my view, has no essential relation to the question of whether an actual controversy exists; hence, its use as a standard in determining whether to take jurisdiction over a petition is ***inherently contrary to the requirements for the exercise of judicial power***.

Factual antecedents

The present petition for *certiorari* and *prohibition* assails the validity of Joint Circular No. 1 dated November 29, 2012 of the Department of Budget and Management (*DBM*) and Department of Health (*DOH*), as well as Joint Circular dated September 3, 2012 of the DBM and Civil Service Commission (*CSC*).

The petitioners are officers and members of the Philippine Public Health Association, Inc. (*PPHAI*). On January 23, 2013, they sent a letter addressed to the respondents Secretary of Budget and Management and Secretary of Health, expressing their opposition to the Joint Circulars as they diminish the benefits granted to them by the *Magna Carta* of Public Health Workers (Republic Act No. 7305, hereinafter *RA 7305*).

Thereafter, the petitioners filed a Petition for *Certiorari* and Prohibition before this Court, imputing grave abuse of discretion on the respondents *for issuing the joint circulars*. According to the petitioners, the joint circulars had been issued with grave abuse of discretion for the following reasons:

(1) the joint circulars ***impose additional requirements to the grant of hazard pay***, *i.e.*, it requires the PHWs' duties to expose them to danger, when RA 7305 does not require such condition;

(2) the joint circulars *unduly fix subsistence allowance* at Php50 per day for full-time service and Php25 for part-time service, and these ***not in accordance with the prevailing circumstances required by RA 7305***;

(3) the joint circulars prematurely took effect on January 1, 2012;

(4) longevity pay had been ***wrongfully granted only to regular plantilla positions,*** and unduly ***withheld the Step Increment due to Length of Service*** from those who have already been granted longevity pay. [Emphasis supplied.]

The *ponencia* aptly characterized the respondents' acts as **quasi-legislative in nature**; hence, they are acts not assailable through the writs of *certiorari* and prohibition under the *strict terms* of Rule 65 of the Rules of Court.

From this characterization, the *ponencia* proceeded to discuss the substantive issues raised in the petition to "finally resolve the doubt over the Joint Circulars' validity."

According to the *ponencia*, "the pressing issue of whether or not the joint circulars regulating the salaries and benefits relied upon by public health workers were tainted with grave abuse of discretion rightly deserves its prompt resolution."

The *ponencia* partially granted the petition, and held that the following aspects of the Joint Circulars are tainted with grave abuse of discretion: (*1*) the ineligibility of grantees of longevity pay from receiving the step increment due to length of service is unenforceable as it had not been published in the ONAR; and (*2*) the imposition of hazard pay below the minimum prescribed under RA 7305 is invalid.

The traditional approach in assailing quasi-legislative acts

I agree with the *ponencia*'s conclusion that the petitioners availed of an ***improper remedy*** to directly assail the Joint Circulars before the Court.

A writ of *certiorari* lies against judicial or quasi-judicial acts, while a writ of prohibition is the proper remedy to address judicial, quasi-judicial or ministerial acts. Hence, under these terms alone, the present petition is easily dismissible for having been an improper remedy.

Traditionally, the proper remedy to assail the validity of these joint circulars would have been through an ordinary action for nullification filed with the proper Regional Trial Court. Any allegation that the respondents are performing or threatening to perform functions without or in excess of their jurisdiction may appropriately be prevented or prohibited through a writ of injunction or a temporary restraining order. [2]

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2 *Holy Spirit Homeowners Association v. Defensor*, 529 Phil. 573, 588 (2006).

Had the petitioners availed of the proper remedy, then immediate recourse to this Court's original jurisdiction to issue a writ of *certiorari* or prohibition would have been avoided. While this Court has original jurisdiction to issue these extraordinary writs, this jurisdiction is shared with the Regional Trial Court and the Court of Appeals.

As a matter of policy, direct recourse to the Court is frowned upon and a violation of the policy renders a petition dismissible under the **Doctrine of Hierarchy of Courts**.

Despite the observed impropriety of remedies used, the *ponencia* proceeded to render its decision on the case, and partially granted it under the following dispositive portion:

> **WHEREFORE**, premises considered, the instant petition **is PARTLY GRANTED**. The DBM-DOH Joint Circular, insofar as it lowers the hazard pay at rates below the minimum prescribed by Section 21 of RA No. 7305 and Section 7.1.5 (a) of its Revised IRR, is declared **INVALID**. The DBM-CSC Joint Circular, insofar as it provides that an official or employee authorized to be granted Longevity Pay under an existing law is not eligible for the grant of Step Increment Due to Length of Service, is declared **UNENFORCEABLE**. The validity, however, of the DBM-DOH Joint Circular as to the qualification of actual exposure to danger for PHW's entitlement to hazard pay, the rates Php50 and Php25 subsistence allowance, and the entitlement to longevity pay on the basis of the PHW's status in the plantilla of regular positions, is **UPHELD**.

The *ponencia*'s approach in resolving the petition is not without precedent. Indeed, in the past, we have granted petitions for *certiorari* and prohibition that assail quasi-legislative acts despite the use of inappropriate remedies in questioning the quasi-legislative acts.

In granting the petitions and invalidating the questioned legislative act, we gave consideration to the ***"transcendental nature and paramount importance" of deciding the issues they raised***. In some cases, we also invoked ***"compelling state interest"*** as reason to justify the early resolution of these issues,[3] and observed as well the need for the Court to make ***a final and definitive pronouncement on pivotal issues for everyone's enlightenment and guidance***.[4]

The public importance of resolving issues in a petition should not determine whether the Court takes jurisdiction over a case

In my view, the public importance of resolving the issues presented in a petition should not determine the Court's jurisdiction over a case, as public

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3 *Quinto v. Comelec*, G.R. No. 189698, December 1, 2009, 606 SCRA 258, 276.

4 *GMA Network v. Comelec*, G.R. No. 205357, September 02, 2014, 734 SCRA 88, 125 – 126.

importance does not affect the subject matter of these petitions. That a petition relates to a matter of public importance does not make the abuse in the exercise of discretion any more or less grave.

For instance, we gave due course to the petitions for *certiorari* in *Review Center Association of the Philippines v. Executive Secretary*,[5] and in *Pharmaceutical and Healthcare Association of the Philippines v. Secretary of Health*,[6] both of which assail quasi-legislative acts.

The administrative rules in these petitions carry different public policy reasons behind them, and I cannot see how these policy goals could have affected the fact that in both cases, the respondent administrative agency acted outside of its jurisdiction in issuing administrative rules that contradict with, or are not contemplated by, the laws they seek to implement.

In more concrete terms, the right to have access to quality education, which is the state interest in issuing the assailed Executive Order No. 566 in *Review Center Association of the Philippines v. Executive Secretary*,[7] does not have any direct bearing on the fact that its provisions extended beyond the provisions of the laws it seeks to implement.

The same argument applies to Sections 4(f), 11 and 46 of Administrative Order No. 2006-0012, which had been invalidated through a *certiorari* petition in *Pharmaceutical and Healthcare Association of the Philippines v. Secretary of Health*.[8] That the nation has an interest in promoting the breastfeeding of Filipino infants does not affect the authority of the Secretary of Health to issue administrative rules that are beyond what the Milk Code requires.

A law, by its very nature and definition, governs human conduct that is important to society.[9] That the State, through Congress, found that a

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5 G.R. No. 180046, 602 Phil. 342 (2009).

6 G.R. No. 173034, 561 Phil. 386 (2007).

7 *Supra* note 5.

8 *Supra* note 6.

9 The Black's Law Dictionary provides the following definitions of law:

> 1. That which is laid down, ordained, or established. A rule or method according to which phenomena or actions coexist or follow each other. 2. A system of principles and rules of human conduct, being the aggregate of those commandments and principles which are either prescribed or recognized by the governing power in an organized jural society as its will in relation to the conduct of the members of such society, and which it undertakes to maintain and sanction and to use as the criteria of the actions of such members. "Law" is a solemn expression of legislative will. It orders and permits and forbids. It announces rewards and punishments. Its provisions generally relate not to solitary or singular cases, but to what passes in the ordinary course of affairs. Civ. Code La. arts. 1. 2. "Law," without an article, properly implies a science or system of principles or rules of human conduct, answering to the Latin "jus;" as when it is spoken of as a subject of study or practice. In this sense, it includes the decisions of courts of justice, as well as acts of the legislature. The judgment of a competent, court, until reversed or otherwise superseded, is law, as much as any statute. Indeed, it may happen that a statute may be passed in violation of law, that is, of the fundamental law or constitution of a state; that it is the prerogative of courts in such cases to declare it void, or, in other words, to declare it not to be law. Rurrill. 3. A rule of civil conduct prescribed by the supreme power in a, state. 1 Steph. Comm. 25; Civ. Code Dak. *Definition of Law*, Black's Law Dictionary Website, at http://thelawdictionary.org/letter/l/page/13/ (July 27, 2015).

particular conduct should be regulated already speaks of the importance of, and need for, this regulation.

Necessarily, any deviation from this regulation carries some degree of importance to the public, because society, by agreeing to a regulation, has an interest that it be applied to all persons covered by the law, without exception.

Our Constitution has established how the need for regulation is identified, as well as the process for its formulation and implementation. The identification function has been given to Congress through the process of law-making. Implementation, on the other hand, has been given to the Executive. Our task in the Judiciary comes only in cases of conflict, either in the implementation of these laws or in the exercise of the powers of the two other branches of government.[10]

This is how our republican, democratic system of government institutionalizes the doctrine of separation of powers, with each branch of government reigning supreme over its particular designation under the Constitution.[11]

When we, as the Highest Court of the land, decree that an issue involving the implementation of a law is of paramount interest, does this declaration not teeter towards the role assigned for Congress, which possesses the plenary power to determine what needs are to be regulated and how the regulation should operate?

This problem, I believe, becomes even starker when we look at this phenomenon at the macro-level: when we, ***by exception***, decide to take jurisdiction in some cases, and apply the ***general rule*** in others. Thereby, we, in effect, determine that public issues are more important or paramount than others.

Taking an active part in determining how public issues are prioritized is not part of the judicial power vested in the Court. We may do this tangentially, as ***the outcome of our cases could demonstrate public importance***, but we cannot and should not make this outcome the basis of when we should exercise judicial power.

A survey of cases involving a petition for *certiorari* against a quasi-legislative act shows the ***uneven, and rather arbitrary, record*** of how we determine the paramount importance standard.

We have, in the past, ***relaxed the requirements*** for *certiorari* in petitions against the following quasi-legislative acts: *(1)* Commission on Audit Circular No. 89-299 lifting the pre-audit of government transactions

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10 *Belgica, et. al. v. Ochoa*, G.R. No. 208566, November 19, 2013, 710 SCRA 1, 106 – 107.

11 *Angara v. Electoral Commission*, 63 Phil 139, 156 – 157 (1936).

of national government agencies;[12] (*2*) Comelec Resolution No. 8678 considering any candidate holding public appointive office to have ipso facto resigned upon filing his or her Certificate of Candidacy;[13] *(3)* Comelec Resolution No. 9615 limiting the broadcast and radio advertisements of candidates and political parties for national election positions to an aggregate total of one hundred twenty (120) minutes and one hundred eighty (180) minutes, respectively;[14] (*4*) Executive Order No. 566 (EO 566) and Commission on Higher Education (CHED) Memorandum Order No. 30, series of 2007 (RIRR) directing the Commission on Higher Education to regulate the establishment and operation of review centers;[15] and (*5*) Administrative Order (A.O.) No. 2006-0012 implementing the Milk Code.[16]

On the other hand, ***we applied the strict requirements*** for a *certiorari* petition against the following: *(1)* Section 2.6 of the Distribution Services and Open Access Rules (DSOAR), which obligates certain customers to advance the amount needed to cover the expenses of extending lines and installing additional facilities[17] *(2)* Comelec Resolution No. 7798 prohibiting barangay officials and tanods from staying in polling places during elections[18] *(3)* Department of Agrarian Reform (DAR) Administrative Order (AO) No. 01-02, as amended by DAR AO No. 05-07 and DAR Memorandum No. 88 involving the reclassification of agricultural lands[19] *(4)* Executive Order No. 7 Directing the Rationalization of the Compensation and Position Classification System in Government Owned and Controlled Corporations and Government Financial Institutions;[20] and *(5)* the implementing rules and regulations (IRR) of Republic Act No. 9207, otherwise known as the "National Government Center (NGC) Housing and Land Utilization Act of 2003."[21]

I believe that all these quasi-legislative acts involve matters that are important to the public. The Court is not in the position to weigh which of these regulations carried more importance than the others by exercising jurisdiction over petitions involving some of them and dismissing other petitions outright.

Who are we, for instance, to say that regulating review centers is more important than the conversion of agricultural lands? Or that the *ipso facto* resignation of public appointive officials running for office is more

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12 *Dela Llana v. COA*, 681 Phil. 186 (2012).
13 *Quinto v. Comelec*, 621 Phil. 236 (2009).
14 *GMA Network v. Comelec*, G.R. No. 205357, September 02, 2014, 734 SCRA 88.
15 *Review Center Association of the Philippines v. Ermita*, 602 Phil. 342 (2009).
16 *Pharmaceutical and Healthcare Association of the Philippines v. Secretary of Health*, 561 Phil. 386 (2007).
17 *CREBA v. ERC*, 638 Phil. 542 (2010).
18 *Concepcion v Comelec*, 609 Phil. 201 (2009).
19 *CREBA v Secretary of Agrarian Reform*, 635 Phil. 283 (2010).
20 *Galicto v. Aquino*, G.R. No. 193978, February 28, 2012, 667 SCRA 150.
21 *Supra* note 2.

important than the prohibition against barangay officials to stay in polling places during the elections?

To my mind, these issues all affect our nation, and the Court cannot and should not impose any standard, unless the measure is provided in the Constitution or in our laws, to determine why one petition would be more important than another, such that the former deserves the relaxation of *certiorari* requirements.

Furthermore, the relaxation of *certiorari* requirements through the paramount importance exception affects our approach in reviewing ***cases brought to us on appeal***. Our appellate jurisdiction reviews the decisions of the lower court for errors of law,[22] or errors of law and fact.[23]

In several cases,[24] however, we reversed the decision of the Court of Appeals denying a petition for *certiorari* against a quasi-legislative act based on the terms of the Rules of Court. In these reversals, we significantly noted the paramount importance of resolving the case on appeal and, on this basis, relaxed the requirements of the petition for *certiorari* filed in the lower court.

This kind of approach, to my mind, leads to an absurd situation where we effectively hold that the *CA committed an error of law when it applied the rules as provided in the Rules of Court*.

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[22] Rule 45 of the Rules of Court limits the issues in appeal by *certiorari* to the Supreme Court to questions of law, viz:

> Section 1. Filing of petition with Supreme Court. — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth. (1a, 2a)

[23] Jurisprudence teaches us that "(a)s a rule, the jurisdiction of this Court in cases brought to it from the Court of Appeals . . . is limited to the review and revision of errors of law allegedly committed by the appellate court, as its findings of fact are deemed conclusive. As such this Court is not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below. This rule, however, is not without exceptions." The findings of fact of the Court of Appeals, which are as a general rule deemed conclusive, may admit of review by this Court:

(1) when the factual findings of the Court of Appeals and the trial court are contradictory;
(2) when the findings are grounded entirely on speculation, surmises, or conjectures;
(3) when the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible;
(4) when there is grave abuse of discretion in the appreciation of facts;
(5) when the appellate court, in making its findings, goes beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;
(6) when the judgment of the Court of Appeals is premised on a misapprehension of facts;
(7) when the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion;
(8) when the findings of fact are themselves conflicting;
(9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and
(10) when the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record. *Fuentes v. CA*, G.R. No. 109849, February 26, 1997

[24] See, as examples, the following cases: *Metropolitan Bank and Trust Company v. National Wages Productivity Commission*, 543 Phil. 318 (2007) and *Equi-Asia Placement v. DFA*, 533 Phil. 590 (2006).

To be sure, when we so act, we send mixed and confusing signals to the lower courts, which cannot be expected to know when a *certiorari* petition may or should be allowed despite being the improper remedy.

Additionally, this kind of approach reflects badly on the Court as an institution, as it applies the highly arbitrary standard of 'paramount importance' in place of what is written in the Rules. A suspicious mind may even attribute malicious motives when the Court invokes a highly subjective standard such as "paramount importance."

The public, no less, is left confused by the Court's uneven approach. Thus, it may not hesitate to file a petition that violates or skirts the margins of the Rules or its jurisprudence, in the hope that the Court would consider its presented issue to be of paramount importance and on this basis take cognizance of the petition.

Assailing quasi-legislative acts through the Court's expanded jurisdiction

I believe that the better approach in handling the *certiorari* cases assailing quasi-legislative acts should be to treat them as petitions invoking ***the Court's expanded jurisdiction***. Thus, the standard in determining whether to exercise judicial power in these cases should be the petitioners' *prima facie* that showing that the respondents committed grave abuse of discretion in issuing the quasi-legislative act.

Should the petitioners sufficiently prove, *prima facie,* a case for grave abuse of discretion, then the petition should be given due course. If not, then it should be dismissed outright. ***Through this approach, which the Court can institutionalize through appropriate rules, the traditional Rule 65 approach can be maintained, while providing for rules that sets the parameters to invoke the courts' expanded jurisdiction to cover situations of grave abuse of discretion in any agency of the government***.

Notably, most of the *certiorari* cases that applied the paramount importance exception eventually granted, or partially granted, the petition.[25] Thus, the Court, in giving due course to the petition must have observed that it had merit, and this initial determination was sufficient to bypass the requirements for a *certiorari* petition.

In other words, it was not the paramount importance of the issues presented that led the Court to decide on the case; it was as in the present case the initially shown possibility that the injuries claimed may be established and the remedies prayed for may be granted.

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[25] See *Quinto v. Comelec*, *supra* note 13; *Review Center Association of the Philippines v. Ermita*, *supra* note 15; and *Pharmaceutical and Healthcare Association of the Philippines v. Secretary of Health*, *supra* note 16.

To cite a past example, the difference between the petitions assailing the quasi-legislative act placing review centers under the CHED's regulation, and the act providing for the conversion of agricultural lands was not the former's greater importance so that the rules was relaxed to give it due course. Their difference could be found in the potency of the issues they presented: in the former, there had been a *prima facie* showing of grave abuse of discretion, as shown by the eventual grant of the petition. In the latter, the *prime facie* grave abuse of discretion threshold was not met; thus, it was not given due course.

I have additionally observed that in several cases[26] dismissing the petition for *certiorari* against quasi-legislative acts, we even provided arguments against the substantive issues in these petitions. In these cases, we held the petition to be procedurally infirm (such that it warranted immediate dismissal), but at the same time noted that these petitions offer no substantive arguments against the assailed acts, such that the petition would not be granted even if we were to proceed to give it due course.

In light of these uneven approaches, I believe it to be more practical, and certainly less arbitrary, if we would only take jurisdiction over a certiorari petition involving a quasi-legislative act through an initial, cursory determination of whether there had been a prima facie showing of grave abuse of discretion.[27]

This approach of course should not affect the ordinary remedies that may be availed of to assail quasi-legislative acts before the lower courts. *Certiorari*, after all, remains to be an extraordinary writ, to be issued only when there is no other plain, speedy recourse.

Certiorari, additionally, lies only against acts of grave abuse of discretion – *i.e.*, an act that is not only legally erroneous, but is often described as "arbitrary, capricious, whimsical, or blatantly in disregard of the law," so that government official or agency acting on the matter is divested of jurisdiction.[28]

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[26] *CREBA v Secretary of Agrarian Reform*, supra note 19 and *Holy Spirit Home Owners Association v. Defensor*, *supra* note 21.

[27] See J. Brion's discussion on the Power of Judicial Review in his Concurring Opinion in *Imbong v. Executive Secretary*, G.R. No.204819, April 8, 2014, 721 SCRA 146, 489 – 491.

[28] The term grave abuse of discretion is defined as "a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility." *Office of the Ombudsman v. Magno*, G.R. No. 178923, November 27, 2008, 572 SCRA 272, 286-287 *citing Microsoft Corporation v. Best Deal Computer Center Corporation*, 438 Phil. 408, 414 (2002); *Suliguin v. Commission on Elections*, G.R. No. 166046, March 23 2006, 485 SCRA 219, 233*; Natalia Realty, Inc. v. Court of Appeals*, 440 Phil. 1, 19-20 (2002); *Philippine Rabbit Bus Lines, Inc. v. Goimco, Sr.*, 512 Phil. 729, 733-734 (2005) citing *Land Bank of the Philippines v. Court of Appeals*, 456 Phil. 755, 786 (2003); *Duero v. Court of Appeals*, 424 Phil. 12, 20 (2002) citing *Cuison v. Court of Appeals*, G.R. No. 128540, April 15, 1998, 289 SCRA 159, 171.

The respondents committed grave abuse of discretion in insisting that public health workers with a salary grade of 19 or lower should be given less than 25 percent of their salary as hazard pay.

I agree with the *ponencia* that the respondents committed grave abuse of discretion in formulating the hazard pay of public health workers with a salary grade of 19 or lower.

The joint circulars that the respondents formulated determine hazard pay depending on the actual exposure and level of risk that public health workers experience while at work. While the respondents possess the discretion to determine how hazard pay is formulated and to categorize it according to risk and exposure, the formulation should not be contrary to what the *Magna Carta* for Public Health Workers provides them.

The formulation of hazard pay under the joint circulars provides a hazard pay amounting to 25% of the PHW's salary only when they are exposed to high risk hazard for 12 or more days. PHWs exposed during a lesser period to high or low risks receive lower hazard pay; the same goes for PHWs exposed to low risk for 122 or more days:

Actual exposure / level of risk	High risk	Low risk
12 or more days	25% of monthly salary	14% of monthly salary
6 to 11 days	14% of monthly salary	8% of monthly salary
Less than 6 days	8% of monthly salary	5% of monthly salary

This formulation blatantly disregards the text of the *Magna Carta*, as well as jurisprudence interpreting this text.

RA 7305 provides that the hazard pay of public health workers with a salary grade of 19 or lower should be AT LEAST be 25% of their salary, *viz*:

> Section 21. Hazard Allowance. - Public health workers in hospitals, sanitaria, rural health units, main health centers, health infirmaries, barangay health stations, clinics and other health-related establishments located in difficult areas, strife-torn or embattled areas, distressed or isolated stations, prisons camps, mental hospitals, radiation-exposed clinics, laboratories or disease-infested areas or in areas declared under state of calamity or emergency for the duration thereof which expose them to great danger, contagion, radiation, volcanic activity/eruption, occupational risks or perils to life as determined by the Secretary of Health or the Head of the unit with the approval of the Secretary of Health, ***shall be compensated hazard allowances equivalent to at least twenty-five percent (25%) of the monthly basic salary of***

> ***health workers receiving salary grade 19 and below***, and five percent (5%) for health workers with salary grade 20 and above.

This provision had already been the subject of the Court's decision in *In Re Entitlement To Hazard Pay of SC Medical and Dental Clinic Personnel*,[29] where the Court observed that:

> In a language too plain to be mistaken, R.A. No. 7305 and its implementing rules mandate that the allocation and distribution of hazard allowances to public health workers within each of the two salary grade brackets at the respective rates of 25% and 5% be based on the salary grade to which the covered employees belong.

While the issue in *In Re Entitlement To Hazard Pay of SC Medical and Dental Clinic Personnel* involved hazard allowance for PHWs with a salary of SG 20 and above, the import of the decision is clear: the rates found in RA 7305 are the minimum rates prescribed for hazard pay, and the government cannot prescribe any rate lower than these.

That Joint Resolution No. 4 subsequently provided for a uniform benefits package for government employees does not affect existing *Magna Carta* benefits, including RA 7305. The Joint Resolution provides:

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

A simple reading of these laws, as well as that of *In Re Entitlement To Hazard Pay of SC Medical and Dental Clinic Personnel* clearly shows that PHWs are entitled to the minimum rates for hazard pay provided in RA 7305.

By issuing Joint Circulars that completely disregard this rule, the respondents committed a patent and gross abuse of its discretion to formulate the amount payable for hazard pay; this disregard amounted to an evasion of its positive duty to implement RA 7305, particularly the minimum rates it prescribes for hazard pay.

Thus, the respondents committed grave abuse of discretion in enacting the Joint Circulars. Its provisions lowering the PHW's hazard pay below the minimum required in RA 7305 is thus void. Administrative rules cannot contradict the laws it implements, and in the present case, the contradiction against RA 7305 is an invalid act on the part of the respondents.

Given the existing grave abuse, it becomes easier and more reasonable to recognize this case as an exception to the doctrine of hierarchy of courts.

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[29] A.M. No. 03-9-02-SC, 592 Phil. 389 (2008).

This doctrine, of course, is a procedural matter that must reasonably yield when a greater substantive reason exists.

For these alternative reasons, I concur in the result and vote for the grant of the petition.

ARTURO D. BRION
Associate Justice