Republic of the Philippines
Supreme Court
Manila

EN BANC

ANTONIO M. SERRANO, Petitioner,	**G.R. No. 167614**
	Present:
- versus -	PUNO, *C.J.*, QUISUMBING, YNARES-SANTIAGO, CARPIO, AUSTRIA-MARTINEZ, CORONA, CARPIO MORALES, TINGA, CHICO-NAZARIO, VELASCO, Jr., NACHURA, LEONARDO-DE CASTRO, BRION, *and* PERALTA, *JJ.*
GALLANT MARITIME SERVICES, INC. and MARLOW NAVIGATION CO., INC., Respondents.	Promulgated: March 24, 2009

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D E C I S I O N

AUSTRIA-MARTINEZ, *J*.:

For decades, the toil of solitary migrants has helped lift entire families and communities out of poverty. Their earnings have built houses, provided health care, equipped schools and planted the seeds of businesses. They have woven together the world by transmitting ideas and knowledge from country to country. They have provided the dynamic human link between cultures, societies and economies. ***Yet, only recently have we begun to understand not only how much international migration impacts development, but how smart public policies can magnify this effect***.

United Nations Secretary-General Ban Ki-Moon
Global Forum on Migration and Development
Brussels, July 10, 2007[1]

For Antonio Serrano (petitioner), a Filipino seafarer, the last clause in the 5th paragraph of Section 10, Republic Act (R.A.) No. 8042,[2] to wit:

> Sec. 10. *Money Claims*. - x x x In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the workers shall be entitled to the full reimbursement of his placement fee with interest of twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract ***or for three (3) months for every year of the unexpired term, whichever is less.***
>
> x x x x (Emphasis and underscoring supplied)

does not magnify the contributions of overseas Filipino workers (OFWs) to national development, but exacerbates the hardships borne by them by unduly limiting their entitlement in case of illegal dismissal to their lump-sum salary either for the unexpired portion of their employment contract or for three months for every year of the unexpired term, whichever is less (subject clause). Petitioner claims that the last clause violates the OFWs' constitutional rights in that it impairs the terms of their contract, deprives them of equal protection and denies them due process.

By way of Petition for Review under Rule 45 of the Rules of Court, petitioner assails the December 8, 2004 Decision[3] and April 1, 2005 Resolution[4] of the Court of Appeals (CA), which applied the subject clause, entreating this Court to declare the subject clause unconstitutional.

Petitioner was hired by Gallant Maritime Services, Inc. and Marlow Navigation Co., Ltd. (respondents) under a Philippine Overseas Employment Administration (POEA)-approved Contract of Employment with the following terms and conditions:

> Duration of contract 12 months
> Position Chief Officer
> Basic monthly salary US$1,400.00
> Hours of work 48.0 hours per week
> Overtime US$700.00 per month
> Vacation leave with pay 7.00 days per month[5]

On March 19, 1998, the date of his departure, petitioner was constrained to accept a downgraded employment contract for the position of Second Officer with a monthly salary of US$1,000.00, upon the assurance and representation of respondents that he would be made Chief

Officer by the end of April 1998.[6]

Respondents did not deliver on their promise to make petitioner Chief Officer.[7] Hence, petitioner refused to stay on as Second Officer and was repatriated to the Philippines on May 26, 1998.[8]

Petitioner's employment contract was for a period of 12 months or from March 19, 1998 up to March 19, 1999, but at the time of his repatriation on May 26, 1998, he had served only two (2) months and seven (7) days of his contract, leaving an unexpired portion of nine (9) months and twenty-three (23) days.

Petitioner filed with the Labor Arbiter (LA) a Complaint[9] against respondents for constructive dismissal and for payment of his money claims in the total amount of US$26,442.73, broken down as follows:

May 27/31, 1998 (5 days) incl. Leave pay	US$ 413.90
June 01/30, 1998	2,590.00
July 01/31, 1998	2,590.00
August 01/31, 1998	2,590.00
Sept. 01/30, 1998	2,590.00
Oct. 01/31, 1998	2,590.00
Nov. 01/30, 1998	2,590.00
Dec. 01/31, 1998	2,590.00
Jan. 01/31, 1999	2,590.00
Feb. 01/28, 1999	2,590.00
Mar. 1/19, 1999 (19 days) incl. leave pay	1,640.00
	25,382.23
Amount adjusted to chief mate's salary (March 19/31, 1998 to April 1/30, 1998) +	1,060.50[10]
TOTAL CLAIM	US$ 26,442.73[11]

as well as moral and exemplary damages and attorney's fees.

The LA rendered a Decision dated July 15, 1999, declaring the dismissal of petitioner illegal and awarding him monetary benefits, to wit:

> WHEREFORE, premises considered, judgment is hereby rendered declaring that the dismissal of the complainant (petitioner) by the respondents in the above-entitled case was illegal and the respondents are hereby ordered to pay the complainant [petitioner], jointly and severally, in Philippine Currency, based on the rate of exchange prevailing at the time of payment, the amount of ***EIGHT THOUSAND SEVEN***

HUNDRED SEVENTY U.S. DOLLARS (US $8,770.00), representing the complainants salary for three (3) months of the unexpired portion of the aforesaid contract of employment.

The respondents are likewise ordered to pay the complainant [petitioner], jointly and severally, in Philippine Currency, based on the rate of exchange prevailing at the time of payment, the amount of FORTY FIVE U.S. DOLLARS (US$ 45.00),[12] representing the complainants claim for a salary differential. In addition, the respondents are hereby ordered to pay the complainant, jointly and severally, in Philippine Currency, at the exchange rate prevailing at the time of payment, the complainants (petitioner's) claim for attorneys fees equivalent to ten percent (10%) of the total amount awarded to the aforesaid employee under this Decision.

The claims of the complainant for moral and exemplary damages are hereby DISMISSED for lack of merit.

All other claims are hereby DISMISSED.

SO ORDERED.[13] (Emphasis supplied)

In awarding petitioner a lump-sum salary of US$8,770.00, the LA based his computation on the salary period of three months only -- rather than the entire unexpired portion of nine months and 23 days of petitioner's employment contract - applying the subject clause. However, the LA applied the salary rate of US$2,590.00, consisting of petitioner's [b]asic salary, US$1,400.00/month + US$700.00/month, fixed overtime pay, + US$490.00/month, vacation leave pay = US$2,590.00/compensation per month.[14]

Respondents appealed[15] to the National Labor Relations Commission (NLRC) to question the finding of the LA that petitioner was illegally dismissed.

Petitioner also appealed[16] to the NLRC on the sole issue that the LA erred in not applying the ruling of the Court in *Triple Integrated Services, Inc. v. National Labor Relations Commission*[17] that in case of illegal dismissal, OFWs are entitled to their salaries for the unexpired portion of their contracts.[18]

In a Decision dated June 15, 2000, the NLRC modified the LA Decision, to wit:

WHEREFORE, the Decision dated 15 July 1999 is MODIFIED. Respondents are hereby ordered to pay complainant, jointly and severally, in Philippine currency, at the prevailing rate of exchange at the time of payment the following:

1. Three (3) months salary
$1,400 x 3 US$4,200.00

2. Salary differential 45.00
US$4,245.00
3. 10% Attorneys fees 424.50
TOTAL US$4,669.50

The other findings are affirmed.
SO ORDERED.[19]

The NLRC corrected the LA's computation of the lump-sum salary awarded to petitioner by reducing the applicable salary rate from US$2,590.00 to US$1,400.00 because R.A. No. 8042 does not provide for the award of overtime pay, which should be proven to have been actually performed, and for vacation leave pay.[20]

Petitioner filed a Motion for Partial Reconsideration, but this time he questioned the constitutionality of the subject clause.[21] The NLRC denied the motion.[22]

Petitioner filed a Petition for *Certiorari*[23] with the CA, reiterating the constitutional challenge against the subject clause.[24] After initially dismissing the petition on a technicality, the CA eventually gave due course to it, as directed by this Court in its Resolution dated August 7, 2003 which granted the petition for *certiorari*, docketed as G.R. No. 151833, filed by petitioner.

In a Decision dated December 8, 2004, the CA affirmed the NLRC ruling on the reduction of the applicable salary rate; however, the CA skirted the constitutional issue raised by petitioner.[25]

His Motion for Reconsideration[26] having been denied by the CA,[27] petitioner brings his cause to this Court on the following grounds:

I

The Court of Appeals and the labor tribunals have decided the case in a way not in accord with applicable decision of the Supreme Court involving similar issue of granting unto the migrant worker back wages equal to the unexpired portion of his contract of employment instead of limiting it to three (3) months

II

In the alternative that the Court of Appeals and the Labor Tribunals were merely applying their interpretation of Section 10 of Republic Act No. 8042, it is submitted that the Court of Appeals gravely erred in law when it failed to discharge its judicial duty to decide questions of substance not theretofore determined by the Honorable Supreme Court, particularly, the constitutional issues raised by the petitioner on the constitutionality of said law, which unreasonably, unfairly and arbitrarily limits payment of the award for back wages of overseas workers to three (3) months.

III

Even without considering the constitutional limitations [of] Sec. 10 of Republic Act No. 8042, the Court of Appeals gravely erred in law in excluding from petitioners award the overtime pay and vacation pay provided in his contract since under the contract they form part of his salary.[28]

On February 26, 2008, petitioner wrote the Court to withdraw his petition as he is already old and sickly, and he intends to make use of the monetary award for his medical treatment and medication.[29] Required to comment, counsel for petitioner filed a motion, urging the court to allow partial execution of the undisputed monetary award and, at the same time, praying that the constitutional question be resolved.[30]

Considering that the parties have filed their respective memoranda, the Court now takes up the full merit of the petition mindful of the extreme importance of the constitutional question raised therein.

On the first and second issues

The unanimous finding of the LA, NLRC and CA that the dismissal of petitioner was illegal is not disputed. Likewise not disputed is the salary differential of US$45.00 awarded to petitioner in all three fora. What remains disputed is only the computation of the lump-sum salary to be awarded to petitioner by reason of his illegal dismissal.

Applying the subject clause, the NLRC and the CA computed the lump-sum salary of petitioner at the monthly rate of US$1,400.00 covering the period of three months out of the unexpired portion of nine months and 23 days of his employment contract or a total of US$4,200.00.

Impugning the constitutionality of the subject clause, petitioner contends that, in addition to the US$4,200.00 awarded by the NLRC and the CA, he is entitled to US$21,182.23 more or a total of US$25,382.23, equivalent to his salaries for the entire nine months and 23 days left of his employment contract, computed at the monthly rate of US$2,590.00.[31]

The Arguments of Petitioner

Petitioner contends that the subject clause is unconstitutional because it unduly impairs the freedom of OFWs to negotiate for and stipulate in their overseas employment contracts a determinate employment period and a fixed salary package.[32] It also impinges on the equal protection clause, for it treats OFWs differently from local Filipino workers (local workers) by putting a cap on the amount of lump-sum salary to which OFWs are entitled in case of illegal dismissal, while setting no limit to

the same monetary award for local workers when their dismissal is declared illegal; that the disparate treatment is not reasonable as there is no substantial distinction between the two groups;[33] and that it defeats Section 18,[34] Article II of the Constitution which guarantees the protection of the rights and welfare of all Filipino workers, whether deployed locally or overseas.[35]

Moreover, petitioner argues that the decisions of the CA and the labor tribunals are not in line with existing jurisprudence on the issue of money claims of illegally dismissed OFWs. Though there are conflicting rulings on this, petitioner urges the Court to sort them out for the guidance of affected OFWs.[36]

Petitioner further underscores that the insertion of the subject clause into R.A. No. 8042 serves no other purpose but to benefit local placement agencies. He marks the statement made by the Solicitor General in his Memorandum, *viz.*:

> Often, placement agencies, their liability being solidary, shoulder the payment of money claims in the event that jurisdiction over the foreign employer is not acquired by the court or if the foreign employer reneges on its obligation. Hence, placement agencies that are in good faith and which fulfill their obligations are unnecessarily penalized for the acts of the foreign employer. ***To protect them and to promote their continued helpful contribution in deploying Filipino migrant workers, liability for money claims was reduced under Section 10 of R.A. No. 8042.*** [37] (Emphasis supplied)

Petitioner argues that in mitigating the solidary liability of placement agencies, the subject clause sacrifices the well-being of OFWs. Not only that, the provision makes foreign employers better off than local employers because in cases involving the illegal dismissal of employees, foreign employers are liable for salaries covering a maximum of only three months of the unexpired employment contract while local employers are liable for the full lump-sum salaries of their employees. As petitioner puts it:

> In terms of practical application, the local employers are not limited to the amount of backwages they have to give their employees they have illegally dismissed, following well-entrenched and unequivocal jurisprudence on the matter. On the other hand, foreign employers will only be limited to giving the illegally dismissed migrant workers the maximum of three (3) months unpaid salaries notwithstanding the unexpired term of the contract that can be more than three (3) months.[38]

Lastly, petitioner claims that the subject clause violates the due process clause, for it deprives him of the salaries and other emoluments he is entitled to under his fixed-period employment contract.[39]

The Arguments of Respondents

In their Comment and Memorandum, respondents contend that the constitutional issue should not be entertained, for this was belatedly interposed by petitioner in his appeal before the CA, and not at the earliest opportunity, which was when he filed an appeal before the NLRC.[40]

The Arguments of the Solicitor General

The Solicitor General (OSG)[41] points out that as R.A. No. 8042 took effect on July 15, 1995, its provisions could not have impaired petitioner's 1998 employment contract. Rather, R.A. No. 8042 having preceded petitioner's contract, the provisions thereof are deemed part of the minimum terms of petitioner's employment, especially on the matter of money claims, as this was not stipulated upon by the parties.[42]

Moreover, the OSG emphasizes that OFWs and local workers differ in terms of the nature of their employment, such that their rights to monetary benefits must necessarily be treated differently. The OSG enumerates the essential elements that distinguish OFWs from local workers: first, while local workers perform their jobs within Philippine territory, OFWs perform their jobs for foreign employers, over whom it is difficult for our courts to acquire jurisdiction, or against whom it is almost impossible to enforce judgment; and second, as held in *Coyoca v. National Labor Relations Commission*[43] and *Millares v. National Labor Relations Commission,*[44] OFWs are contractual employees who can never acquire regular employment status, unlike local workers who are or can become regular employees. Hence, the OSG posits that there are rights and privileges exclusive to local workers, but not available to OFWs; that these peculiarities make for a reasonable and valid basis for the differentiated treatment under the subject clause of the money claims of OFWs who are illegally dismissed. Thus, the provision does not violate the equal protection clause nor Section 18, Article II of the Constitution.[45]

Lastly, the OSG defends the rationale behind the subject clause as a police power measure adopted to mitigate the solidary liability of placement agencies for this redounds to the benefit of the migrant workers whose welfare the government seeks to promote. The survival of legitimate placement agencies helps [assure] the government that migrant workers are properly deployed and are employed under decent and humane conditions.[46]

The Court's Ruling

The Court sustains petitioner on the first and second issues.

When the Court is called upon to exercise its power of judicial review of the acts of its co-equals, such as the Congress, it does so only when these conditions obtain: (1) that there is an actual case or controversy involving a conflict of rights susceptible of judicial determination;[47] (2) that the constitutional question is raised by a proper party[48] and at the earliest opportunity;[49] and (3) that the constitutional question is the very *lis mota* of the case,[50] otherwise the Court will dismiss the case or decide the same on some other ground.[51]

Without a doubt, there exists in this case an actual controversy directly involving petitioner who is personally aggrieved that the labor tribunals and the CA computed his monetary award based on the salary period of three months only as provided under the subject clause.

The constitutional challenge is also timely. It should be borne in mind that the requirement that a constitutional issue be raised at the earliest opportunity entails the interposition of the issue in the pleadings before a ***competent court***, such that, if the issue is not raised in the pleadings before that competent court, it cannot be considered at the trial and, if not considered in the trial, it cannot be considered on appeal.[52] Records disclose that the issue on the constitutionality of the subject clause was first raised, not in petitioner's appeal with the NLRC, but in his Motion for Partial Reconsideration with said labor tribunal,[53] and reiterated in his Petition for *Certiorari* before the CA.[54] Nonetheless, the issue is deemed seasonably raised because it is not the NLRC but the CA which has the competence to resolve the constitutional issue. The NLRC is a labor tribunal that merely performs a quasi-judicial function its function in the present case is limited to determining questions of fact to which the legislative policy of R.A. No. 8042 is to be applied and to resolving such questions in accordance with the standards laid down by the law itself;[55] thus, its foremost function is to administer and enforce R.A. No. 8042, and not to inquire into the validity of its provisions. The CA, on the other hand, is vested with the power of judicial review or the power to declare unconstitutional a law or a provision thereof, such as the subject clause.[56] Petitioner's interposition of the constitutional issue before the CA was undoubtedly seasonable. The CA was therefore remiss in failing to take up the issue in its decision.

The third condition that the constitutional issue be critical to the resolution of the case likewise obtains because the monetary claim of petitioner to his lump-sum salary for the entire unexpired portion of his 12-month employment contract, and not just for a period of three months, strikes at the very core of the subject clause.

Thus, the stage is all set for the determination of the constitutionality of the subject clause.

Does the subject clause violate Section 10, Article III of the Constitution on non-impairment of contracts?

The answer is in the negative.

Petitioner's claim that the subject clause unduly interferes with the stipulations in his contract on the term of his employment and the fixed salary package he will receive[57] is not tenable.

Section 10, Article III of the Constitution provides:

No law impairing the obligation of contracts shall be passed.

The prohibition is aligned with the general principle that laws newly enacted have only a prospective operation,[58] and cannot affect acts or contracts already perfected;[59] however, as to laws already in existence, their provisions are read into contracts and deemed a part thereof.[60] Thus, the non-impairment clause under Section 10, Article II is limited in application to laws about to be enacted that would in any way derogate from existing acts or contracts by enlarging, abridging or in any manner changing the intention of the parties thereto.

As aptly observed by the OSG, the enactment of R.A. No. 8042 in 1995 preceded the execution of the employment contract between petitioner and respondents in 1998. Hence, it cannot be argued that R.A. No. 8042, particularly the subject clause, impaired the employment contract of the parties. Rather, when the parties executed their 1998 employment contract, they were deemed to have incorporated into it all the provisions of R.A. No. 8042.

But even if the Court were to disregard the timeline, the subject clause may not be declared unconstitutional on the ground that it impinges on the impairment clause, for the law was enacted in the exercise of the police power of the State to regulate a business, profession or calling, particularly the recruitment and deployment of OFWs, with the noble end in view of ensuring respect for the dignity and well-being of OFWs wherever they may be employed.[61] Police power legislations adopted by the State to promote the health, morals, peace, education, good order, safety, and general welfare of the people are generally applicable not only to future contracts but even to those already in existence, for all private contracts must yield to the superior and legitimate measures taken by the State

to promote public welfare.[62]

Does the subject clause violate Section 1, Article III of the Constitution, and Section 18, Article II and Section 3, Article XIII on labor as a protected sector?

The answer is in the affirmative.

Section 1, Article III of the Constitution guarantees:

> No person shall be deprived of life, liberty, or property without due process of law nor shall any person be denied the equal protection of the law.

Section 18,[63] Article II and Section 3,[64] Article XIII accord all members of the labor sector, without distinction as to place of deployment, full protection of their rights and welfare.

To Filipino workers, the rights guaranteed under the foregoing constitutional provisions translate to economic security and parity: all monetary benefits should be equally enjoyed by workers of similar category, while all monetary obligations should be borne by them in equal degree; none should be denied the protection of the laws which is enjoyed by, or spared the burden imposed on, others in like circumstances.[65]

Such rights are not absolute but subject to the inherent power of Congress to incorporate, when it sees fit, a system of classification into its legislation; however, to be valid, the classification must comply with these requirements: 1) it is based on substantial distinctions; 2) it is germane to the purposes of the law; 3) it is not limited to existing conditions only; and 4) it applies equally to all members of the class.[66]

There are three levels of scrutiny at which the Court reviews the constitutionality of a classification embodied in a law: a) the deferential or rational basis scrutiny in which the challenged classification needs only be shown to be rationally related to serving a legitimate state interest;[67] b) the middle-tier or intermediate scrutiny in which the government must show that the challenged classification serves an important state interest and that the classification is at least substantially related to serving that interest;[68] and c) strict judicial scrutiny[69] in which a legislative classification which impermissibly interferes with the exercise of a fundamental right[70] or operates

to the peculiar disadvantage of a suspect class[71] is presumed unconstitutional, and the burden is upon the government to prove that the classification is necessary to achieve a ***compelling state interest*** and that it is the ***least restrictive means*** to protect such interest.[72]

Under American jurisprudence, strict judicial scrutiny is triggered by suspect classifications[73] based on race[74] or gender[75] but not when the classification is drawn along income categories.[76]

It is different in the Philippine setting. In *Central Bank (now Bangko Sentral ng Pilipinas) Employee Association, Inc. v. Bangko Sentral ng Pilipinas,*[77] the constitutionality of a provision in the charter of the *Bangko Sentral ng Pilipinas* (BSP), a government financial institution (GFI), was challenged for maintaining its rank-and-file employees under the Salary Standardization Law (SSL), even when the rank-and-file employees of other GFIs had been exempted from the SSL by their respective charters. Finding that the disputed provision contained a suspect classification based on salary grade, the Court deliberately employed the standard of strict judicial scrutiny in its review of the constitutionality of said provision. More significantly, it was in this case that the Court revealed the broad outlines of its judicial philosophy, to wit:

> Congress retains its wide discretion in providing for a valid classification, and its policies should be accorded recognition and respect by the courts of justice except when they run afoul of the Constitution. The deference stops where the classification violates a fundamental right, or ***prejudices persons accorded special protection by the Constitution***. When these violations arise, this Court must discharge its primary role as the vanguard of constitutional guaranties, and require a stricter and more exacting adherence to constitutional limitations. Rational basis should not suffice.
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> ***Admittedly, the view that prejudice to persons accorded special protection by the Constitution requires a stricter judicial scrutiny finds no support in American or English jurisprudence. Nevertheless, these foreign decisions and authorities are not per se controlling in this jurisdiction.*** At best, they are persuasive and have been used to support many of our decisions. We should not place undue and fawning reliance upon them and regard them as indispensable mental crutches without which we cannot come to our own decisions through the employment of our own endowments. We live in a different ambience and must decide our own problems in the light of our own interests and needs, and of our qualities and even idiosyncrasies as a people, and always with our own concept of law and justice. Our laws must be construed in accordance with the intention of our own lawmakers and such intent may be deduced from the language of each law and the context of other local legislation related thereto. More importantly, they must be construed to serve our own public interest which is the be-all and the end-all of all our laws. And it need not be stressed that our public interest is distinct and different from others.
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> x x x x
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> Further, the quest for a better and more equal world calls for the use of equal protection as a tool of effective judicial intervention.
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> Equality is one ideal which cries out for bold attention and action in the Constitution. The

Preamble proclaims equality as an ideal precisely in protest against crushing inequities in Philippine society. The command to promote social justice in Article II, Section 10, in all phases of national development, further explicitated in Article XIII, are clear commands to the State to take affirmative action in the direction of greater equality. x x x [T]here is thus in the Philippine Constitution no lack of doctrinal support for a more vigorous state effort towards achieving a reasonable measure of equality.

Our present Constitution has gone further in guaranteeing vital social and economic rights to marginalized groups of society, including labor. Under the policy of social justice, the law bends over backward to accommodate the interests of the working class on the humane justification that those with less privilege in life should have more in law. And the obligation to afford protection to labor is incumbent not only on the legislative and executive branches but also on the judiciary to translate this pledge into a living reality. Social justice calls for the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated.

x x x x

Under most circumstances, the Court will exercise judicial restraint in deciding questions of constitutionality, recognizing the broad discretion given to Congress in exercising its legislative power. Judicial scrutiny would be based on the rational basis test, and the legislative discretion would be given deferential treatment.

But if the challenge to the statute is premised on the denial of a fundamental right, or ***the perpetuation of prejudice against persons favored by the Constitution with special protection, judicial scrutiny ought to be more strict.*** A weak and watered down view would call for the abdication of this Courts solemn duty to strike down any law repugnant to the Constitution and the rights it enshrines. This is true whether the actor committing the unconstitutional act is a private person or the government itself or one of its instrumentalities. Oppressive acts will be struck down regardless of the character or nature of the actor.

x x x x

In the case at bar, the challenged *proviso* operates on the basis of the salary grade or officer-employee status**.** ***It is akin to a distinction based on economic class and status, with the higher grades as recipients of a benefit specifically withheld from the lower grades.*** Officers of the BSP now receive higher compensation packages that are competitive with the industry, while the poorer, low-salaried employees are limited to the rates prescribed by the SSL. The implications are quite disturbing: BSP rank-and-file employees are paid the strictly regimented rates of the SSL while employees higher in rank - possessing higher and better education and opportunities for career advancement - are given higher compensation packages to entice them to stay. ***Considering that majority, if not all, the rank-and-file employees consist of people whose status and rank in life are less and limited, especially in terms of job marketability, it is they - and not the officers - who have the real economic and financial need for the adjustment*** . This is in accord with the policy of the Constitution "to free the people from poverty, provide adequate social services, extend to them a decent standard of living, and improve the quality of life for all. ***Any act of Congress that runs counter to this constitutional desideratum deserves strict scrutiny by this Court before it can pass muster.*** (Emphasis supplied)

Imbued with the same sense of obligation to afford protection to labor, the Court in the present case also employs the standard of strict judicial scrutiny, for it perceives in the subject clause a suspect classification prejudicial to OFWs.

Upon cursory reading, the subject clause appears facially neutral, for it applies to all OFWs. However, a closer examination reveals that the subject clause has a discriminatory intent against, and an invidious impact on, OFWs at two levels:

> First, OFWs with employment contracts of less than one year vis--vis OFWs with employment contracts of one year or more;
>
> Second, among OFWs with employment contracts of more than one year; and
>
> Third, OFWs vis--vis local workers with fixed-period employment;

OFWs with employment contracts of less than one year *vis--vis* OFWs with employment contracts of one year or more

As pointed out by petitioner,[78] it was in *Marsaman Manning Agency, Inc. v. National Labor Relations Commission*[79] (Second Division, 1999) that the Court laid down the following rules on the application of the periods prescribed under Section 10(5) of R.A. No. 804, to wit:

> ***A plain reading of Sec. 10 clearly reveals that the choice of which amount to award an illegally dismissed overseas contract worker, i.e., whether his salaries for the unexpired portion of his employment contract or three (3) months salary for every year of the unexpired term, whichever is less, comes into play only when the employment contract concerned has a term of at least one (1) year or more. This is evident from the words for every year of the unexpired term which follows the words salaries x x x for three months.*** To follow petitioners thinking that private respondent is entitled to three (3) months salary only simply because it is the lesser amount is to completely disregard and overlook some words used in the statute while giving effect to some. This is contrary to the well-established rule in legal hermeneutics that in interpreting a statute, care should be taken that every part or word thereof be given effect since the law-making body is presumed to know the meaning of the words employed in the statue and to have used them advisedly. Ut res magis valeat quam pereat.[80] (Emphasis supplied)

In *Marsaman*, the OFW involved was illegally dismissed two months into his 10-month contract, but was awarded his salaries for the remaining 8 months and 6 days of his contract.

Prior to *Marsaman,* however, there were two cases in which the Court made conflicting rulings on Section 10(5). One was *Asian Center for Career and Employment System and Services v. National Labor Relations Commission* (Second Division, October 1998),[81] which involved an OFW who was awarded a two-year employment contract, but was dismissed after working for one year and two months. The LA declared his dismissal illegal and awarded him SR13,600.00 as lump-sum salary covering eight months, the unexpired portion of his contract. On appeal, the Court reduced the award

to SR3,600.00 equivalent to his three months salary, this being the lesser value, to wit:

> Under Section 10 of R.A. No. 8042, a worker dismissed from overseas employment without just, valid or authorized cause is entitled to his salary for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.
>
> In the case at bar, the unexpired portion of private respondents employment contract is eight (8) months. Private respondent should therefore be paid his basic salary corresponding to three (3) months or a total of SR3,600.[82]

Another was *Triple-Eight Integrated Services, Inc. v. National Labor Relations Commission* (Third Division, December 1998),[83] which involved an OFW (therein respondent Erlinda Osdana) who was originally granted a 12-month contract, which was deemed renewed for another 12 months. After serving for one year and seven-and-a-half months, respondent Osdana was illegally dismissed, and the Court awarded her salaries for the entire unexpired portion of four and one-half months of her contract.

The *Marsaman* interpretation of Section 10(5) has since been adopted in the following cases:

Case Title	**Contract Period**	**Period of Service**	**Unexpired Period**	**Period Applied in the Computation of the Monetary Award**
Skippers v. Maguad[84]	6 months	**2 months**	4 months	**4 months**
Bahia Shipping v. Reynaldo Chua [85]	9 months	**8 months**	4 months	**4 months**
Centennial Transmarine v. dela Cruz I[86]	9 months	**4 months**	5 months	**5 months**
Talidano v. Falcon[87]	12 months	**3 months**	9 months	**3 months**
Univan v. CA [88]	12 months	**3 months**	9 months	**3 months**
Oriental v. CA [89]	12 months	**more than 2 months**	10 months	**3 months**

PCL v. NLRC[90]	12 months	**more than 2 months**	more or less 9 months	**3 months**
Olarte v. Nayona[91]	12 months	**21 days**	11 months and 9 days	**3 months**
JSS v. Ferrer[92]	12 months	**16 days**	11 months and 24 days	**3 months**
Pentagon v. Adelantar[93]	12 months	**9 months and 7 days**	2 months and 23 days	**2 months and 23 days**
Phil. Employ v. Paramio, et al.[94]	12 months	**10 months**	2 months	**Unexpired portion**
Flourish Maritime v. Almanzor[95]	2 years	**26 days**	23 months and 4 days	**6 months or 3 months for each year of contract**
Athenna Manpower v. Villanos[96]	1 year, 10 months and 28 days	**1 month**	1 year, 9 months and 28 days	**6 months or 3 months for each year of contract**

As the foregoing matrix readily shows, the subject clause classifies OFWs into two categories. The first category includes OFWs with fixed-period employment contracts of less than one year; in case of illegal dismissal, they are entitled to their salaries for the entire unexpired portion of their contract. The second category consists of OFWs with fixed-period employment contracts of one year or more; in case of illegal dismissal, they are entitled to monetary award equivalent to only 3 months of the unexpired portion of their contracts.

The disparity in the treatment of these two groups cannot be discounted. In *Skippers*, the respondent OFW worked for only 2 months out of his 6-month contract, but was awarded his salaries for the remaining 4 months. In contrast, the respondent OFWs in *Oriental* and *PCL* who had also worked for about 2 months out of their 12-month contracts were awarded their salaries for only 3 months of the unexpired portion of their contracts. Even the OFWs involved in *Talidano* and *Univan* who had worked for a longer period of 3 months out of their 12-month contracts before being illegally dismissed were awarded their salaries for only 3 months.

To illustrate the disparity even more vividly, the Court assumes a hypothetical OFW-A with an employment contract of 10 months at a monthly salary rate of US$1,000.00 and a hypothetical OFW-B with an employment contract of 15 months with the same monthly salary rate of US$1,000.00. Both commenced work on the same day and under the same employer, and were illegally dismissed after one month of work. Under the subject clause, OFW-A will be entitled to

US$9,000.00, equivalent to his salaries for the remaining 9 months of his contract, whereas OFW-B will be entitled to only US$3,000.00, equivalent to his salaries for 3 months of the unexpired portion of his contract, instead of US$14,000.00 for the unexpired portion of 14 months of his contract, as the US$3,000.00 is the lesser amount.

The disparity becomes more aggravating when the Court takes into account jurisprudence that, ***prior to the effectivity of R.A. No. 8042 on July 14, 1995,***[97] illegally dismissed OFWs, no matter how long the period of their employment contracts, were entitled to their salaries for the entire unexpired portions of their contracts. The matrix below speaks for itself:

Case Title	Contract Period	Period of Service	Unexpired Period	Period Applied in the Computation of the Monetary Award
ATCI v. CA, et al.[98]	2 years	**2 months**	22 months	**22 months**
Phil. Integrated v. NLRC[99]	2 years	**7 days**	23 months and 23 days	**23 months and 23 days**
JGB v. NLC[100]	2 years	**9 months**	15 months	**15 months**
Agoy v. NLRC[101]	2 years	**2 months**	22 months	**22 months**
EDI v. NLRC, et al.[102]	2 years	**5 months**	19 months	**19 months**
Barros v. NLRC, et al.[103]	12 months	**4 months**	8 months	**8 months**
Philippine Transmarine v. Carilla[104]	12 months	**6 months and 22 days**	5 months and 18 days	**5 months and 18 days**

It is plain that prior to R.A. No. 8042, all OFWs, regardless of contract periods or the unexpired portions thereof, were treated alike in terms of the computation of their monetary benefits in case of illegal dismissal. Their claims were subjected to a uniform rule of computation: their basic salaries multiplied by the entire unexpired portion of their employment contracts.

The enactment of the subject clause in R.A. No. 8042 introduced a differentiated rule of computation of the money claims of illegally dismissed OFWs based on their employment periods, in the process ***singling out*** one category whose contracts have an unexpired portion of one year or more

and subjecting them to the peculiar disadvantage of having their monetary awards limited to their salaries for 3 months or for the unexpired portion thereof, whichever is less, but all the while sparing the other category from such prejudice, simply because the latter's unexpired contracts fall short of one year.

Among OFWs With Employment Contracts of More Than One Year

Upon closer examination of the terminology employed in the subject clause, the Court now has misgivings on the accuracy of the *Marsaman* interpretation.

The Court notes that the subject clause or for three (3) months for every year of the unexpired term, whichever is less contains the qualifying phrases every year and unexpired term. By its ordinary meaning, the word term means a limited or definite extent of time.[105] Corollarily, that every year is but part of an unexpired term is significant in many ways: first, the unexpired term must be at least one year, *for if it were any shorter, there would be no occasion for such unexpired term to be measured by every year*; and second, the original term must be more than one year, for otherwise, whatever would be the unexpired term thereof will not reach even a year. Consequently, the more decisive factor in the determination of when the subject clause for three (3) months for every year of the unexpired term, whichever is less shall apply is not the length of the original contract period as held in *Marsaman*,[106] but the length of the unexpired portion of the contract period -- the subject clause applies in cases when the unexpired portion of the contract period is at least one year, which arithmetically requires that the original contract period be more than one year.

Viewed in that light, the subject clause creates a sub-layer of discrimination among OFWs whose contract periods are for more than one year: those who are illegally dismissed with less than one year left in their contracts shall be entitled to their salaries for the entire unexpired portion thereof, while those who are illegally dismissed with one year or more remaining in their contracts shall be covered by the subject clause, and their monetary benefits limited to their salaries for three months only.

To concretely illustrate the application of the foregoing interpretation of the subject clause, the Court assumes hypothetical OFW-C and OFW-D, who each have a 24-month contract at a salary rate of US$1,000.00 per month. OFW-C is illegally dismissed on the 12th month, and OFW-D, on the 13th month. Considering that there is at least 12 months remaining in the contract period of OFW-C, the subject clause applies to the computation of the latter's monetary benefits. Thus, OFW-C will be

entitled, not to US$12,000,00 or the latter's total salaries for the 12 months unexpired portion of the contract, but to the lesser amount of US$3,000.00 or the latter's salaries for 3 months out of the 12-month unexpired term of the contract. On the other hand, OFW-D is spared from the effects of the subject clause, for there are only 11 months left in the latter's contract period. Thus, OFW-D will be entitled to US$11,000.00, which is equivalent to his/her total salaries for the entire 11-month unexpired portion.

OFWs *vis--vis* Local Workers With Fixed-Period Employment

As discussed earlier, prior to R.A. No. 8042, a uniform system of computation of the monetary awards of illegally dismissed OFWs was in place. This uniform system was applicable even to local workers with fixed-term employment.[107]

The earliest rule prescribing a uniform system of computation was actually Article 299 of the Code of Commerce (1888),[108] to wit:

> Article 299. ***If the contracts between the merchants and their shop clerks and employees should have been made of a fixed period, none of the contracting parties, without the consent of the other, may withdraw from the fulfillment of said contract until the termination of the period agreed upon***.
>
> Persons violating this clause shall be subject to indemnify the loss and damage suffered, with the exception of the provisions contained in the following articles.

In *Reyes v. The Compaia Maritima,*[109] the Court applied the foregoing provision to determine the liability of a shipping company for the illegal discharge of its managers prior to the expiration of their fixed-term employment. The Court therein held the shipping company liable for the salaries of its managers for the remainder of their fixed-term employment.

There is a more specific rule as far as seafarers are concerned: Article 605 of the Code of Commerce which provides:

> Article 605. If the contracts of the captain and members of the crew with the agent should be for a definite period or voyage, they cannot be discharged until the fulfillment of their contracts, except for reasons of insubordination in serious matters, robbery, theft, habitual drunkenness, and damage caused to the vessel or to its cargo by malice or manifest or proven negligence.

Article 605 was applied to *Madrigal Shipping Company, Inc. v. Ogilvie,*[110] in which the Court held the shipping company liable for the salaries and subsistence allowance of its

illegally dismissed employees for the entire unexpired portion of their employment contracts.

While Article 605 has remained good law up to the present,[111] Article 299 of the Code of Commerce was replaced by Art. 1586 of the Civil Code of 1889, to wit:

> Article 1586. Field hands, mechanics, artisans, and other ***laborers hired for a certain time and for a certain work*** cannot leave or be dismissed without sufficient cause, before the fulfillment of the contract. (Emphasis supplied.)

Citing *Manresa*, the Court in *Lemoine v. Alkan*[112] read the disjunctive "or" in Article 1586 as a conjunctive "and" so as to apply the provision to local workers who are employed for a time certain although for no particular skill. This interpretation of Article 1586 was reiterated in *Garcia Palomar v. Hotel de France Company*.[113] And in both *Lemoine* and *Palomar,* the Court adopted the general principle that in actions for wrongful discharge founded on Article 1586, local workers are entitled to recover damages to the extent of the amount stipulated to be paid to them by the terms of their contract. On the computation of the amount of such damages, the Court in *Aldaz v. Gay*[114] held:

> The doctrine is well-established in American jurisprudence, and nothing has been brought to our attention to the contrary under Spanish jurisprudence, that when an employee is wrongfully discharged it is his duty to seek other employment of the same kind in the same community, for the purpose of reducing the damages resulting from such wrongful discharge. However, while this is the general rule, the burden of showing that he failed to make an effort to secure other employment of a like nature, and that other employment of a like nature was obtainable, is upon the defendant. ***When an employee is wrongfully discharged under a contract of employment his prima facie damage is the amount which he would be entitled to had he continued in such employment until the termination of the period***. (Howard vs. Daly, 61 N. Y., 362; Allen vs. Whitlark, 99 Mich., 492; Farrell vs. School District No. 2, 98 Mich., 43.)[115] (Emphasis supplied)

On August 30, 1950, the New Civil Code took effect with new provisions on fixed-term employment: Section 2 (Obligations with a Period), Chapter 3, Title I, and Sections 2 (Contract of Labor) and 3 (Contract for a Piece of Work), Chapter 3, Title VIII, Book IV.[116] Much like Article 1586 of the Civil Code of 1889, the new provisions of the Civil Code do not expressly provide for the remedies available to a fixed-term worker who is illegally discharged. However, it is noted that in *Mackay Radio & Telegraph Co., Inc. v. Rich*,[117] the Court carried over the principles on the payment of damages underlying Article 1586 of the Civil Code of 1889 and applied the same to a case involving the illegal discharge of a local worker whose fixed-period employment contract was entered into in 1952, when the new Civil Code was already in effect.[118]

More significantly, the same principles were applied to cases involving overseas Filipino workers whose fixed-term employment contracts were illegally terminated, such as in *First Asian*

Trans & Shipping Agency, Inc. v. Ople,[119] involving seafarers who were illegally discharged. In *Teknika Skills and Trade Services, Inc. v. National Labor Relations Commission,*[120] an OFW who was illegally dismissed prior to the expiration of her fixed-period employment contract as a baby sitter, was awarded salaries corresponding to the unexpired portion of her contract. The Court arrived at the same ruling in *Anderson v. National Labor Relations Commission,*[121] which involved a foreman hired in 1988 in Saudi Arabia for a fixed term of two years, but who was illegally dismissed after only nine months on the job -- the Court awarded him salaries corresponding to 15 months, the unexpired portion of his contract. In *Asia World Recruitment, Inc. v. National Labor Relations Commission,*[122] a Filipino working as a security officer in 1989 in Angola was awarded his salaries for the remaining period of his 12-month contract after he was wrongfully discharged. Finally, in *Vinta Maritime Co., Inc. v. National Labor Relations Commission,*[123] an OFW whose 12-month contract was illegally cut short in the second month was declared entitled to his salaries for the remaining 10 months of his contract.

In sum, prior to R.A. No. 8042, OFWs and local workers with fixed-term employment who were illegally discharged were treated alike in terms of the computation of their money claims: they were uniformly entitled to their salaries for the entire unexpired portions of their contracts. But with the enactment of R.A. No. 8042, specifically the adoption of the subject clause, illegally dismissed OFWs with an unexpired portion of one year or more in their employment contract have since been differently treated in that their money claims are subject to a 3-month cap, whereas no such limitation is imposed on local workers with fixed-term employment.

The Court concludes that the subject clause contains a suspect classification in that, in the computation of the monetary benefits of fixed-term employees who are illegally discharged, it imposes a 3-month cap on the claim of OFWs with an unexpired portion of one year or more in their contracts, but none on the claims of other OFWs or local workers with fixed-term employment. The subject clause singles out one classification of OFWs and burdens it with a peculiar disadvantage.

There being a suspect classification involving a vulnerable sector protected by the Constitution, the Court now subjects the classification to a strict judicial scrutiny, and determines whether it serves a compelling state interest through the least restrictive means.

What constitutes compelling state interest is measured by the scale of rights and powers arrayed

in the Constitution and calibrated by history.[124] It is akin to the paramount interest of the state[125] for which some individual liberties must give way, such as the public interest in safeguarding health or maintaining medical standards,[126] or in maintaining access to information on matters of public concern.[127]

In the present case, the Court dug deep into the records but found no compelling state interest that the subject clause may possibly serve.

The OSG defends the subject clause as a police power measure designed to protect the employment of Filipino seafarers overseas x x x. By limiting the liability to three months [sic], Filipino seafarers have better chance of getting hired by foreign employers. The limitation also protects the interest of local placement agencies, which otherwise may be made to shoulder millions of pesos in termination pay.[128]

The OSG explained further:

> Often, placement agencies, their liability being solidary, shoulder the payment of money claims in the event that jurisdiction over the foreign employer is not acquired by the court or if the foreign employer reneges on its obligation. Hence, placement agencies that are in good faith and which fulfill their obligations are unnecessarily penalized for the acts of the foreign employer. ***To protect them and to promote their continued helpful contribution in deploying Filipino migrant workers, liability for money are reduced under Section 10 of RA 8042.***
>
> This measure redounds to the benefit of the migrant workers whose welfare the government seeks to promote. The survival of legitimate placement agencies helps [assure] the government that migrant workers are properly deployed and are employed under decent and humane conditions.[129] (Emphasis supplied)

However, nowhere in the Comment or Memorandum does the OSG cite the source of its perception of the state interest sought to be served by the subject clause.

The OSG locates the purpose of R.A. No. 8042 in the speech of Rep. Bonifacio Gallego in sponsorship of House Bill No. 14314 (HB 14314), from which the law originated;[130] but the speech makes no reference to the underlying reason for the adoption of the subject clause. That is only natural for none of the 29 provisions in HB 14314 resembles the subject clause.

On the other hand, Senate Bill No. 2077 (SB 2077) contains a provision on money claims, to wit:

> Sec. 10. *Money Claims*. - Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of the complaint, the claim arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas employment including claims for actual, moral, exemplary and other forms of damages.
>
> The liability of the principal and the recruitment/placement agency or any and all claims under this Section shall be joint and several.
>
> Any compromise/amicable settlement or voluntary agreement on any money claims exclusive of damages under this Section shall not be less than fifty percent (50%) of such money claims: *Provided*, That any installment payments, if applicable, to satisfy any such compromise or voluntary settlement shall not be more than two (2) months. Any compromise/voluntary agreement in violation of this paragraph shall be null and void.
>
> Non-compliance with the mandatory period for resolutions of cases provided under this Section shall subject the responsible officials to any or all of the following penalties:
>
> (1) The salary of any such official who fails to render his decision or resolution within the prescribed period shall be, or caused to be, withheld until the said official complies therewith;
> (2) Suspension for not more than ninety (90) days; or
>
> (3) Dismissal from the service with disqualification to hold any appointive public office for five (5) years.
>
> Provided, however, That the penalties herein provided shall be without prejudice to any liability which any such official may have incurred under other existing laws or rules and regulations as a consequence of violating the provisions of this paragraph.

But significantly, Section 10 of SB 2077 does not provide for any rule on the computation of money claims.

A rule on the computation of money claims containing the subject clause was inserted and eventually adopted as the 5th paragraph of Section 10 of R.A. No. 8042. The Court examined the rationale of the subject clause in the transcripts of the Bicameral Conference Committee (Conference Committee) Meetings on the Magna Carta on OCWs (Disagreeing Provisions of Senate Bill No. 2077 and House Bill No. 14314). However, the Court finds no discernible state interest, let alone a compelling one, that is sought to be protected or advanced by the adoption of the subject clause.

In fine, the Government has failed to discharge its burden of proving the existence of a compelling state interest that would justify the perpetuation of the discrimination against OFWs under the subject clause.

Assuming that, as advanced by the OSG, the purpose of the subject clause is to protect the

employment of OFWs by mitigating the solidary liability of placement agencies, such callous and cavalier rationale will have to be rejected. There can never be a justification for any form of government action that alleviates the burden of one sector, but imposes the same burden on another sector, especially when the favored sector is composed of private businesses such as placement agencies, while the disadvantaged sector is composed of OFWs whose protection no less than the Constitution commands. The idea that private business interest can be elevated to the level of a compelling state interest is odious.

Moreover, even if the purpose of the subject clause is to lessen the solidary liability of placement agencies *vis-a-vis* their foreign principals, there are mechanisms already in place that can be employed to achieve that purpose without infringing on the constitutional rights of OFWs.

The POEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers, dated February 4, 2002, imposes administrative disciplinary measures on erring foreign employers who default on their contractual obligations to migrant workers and/or their Philippine agents. These disciplinary measures range from temporary disqualification to preventive suspension. The POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers, dated May 23, 2003, contains similar administrative disciplinary measures against erring foreign employers.

Resort to these administrative measures is undoubtedly the less restrictive means of aiding local placement agencies in enforcing the solidary liability of their foreign principals.

Thus, the subject clause in the 5th paragraph of Section 10 of R.A. No. 8042 is violative of the right of petitioner and other OFWs to equal protection.

Further, there would be certain misgivings if one is to approach the declaration of the unconstitutionality of the subject clause from the lone perspective that the clause directly violates state policy on labor under Section 3,[131] Article XIII of the Constitution.

While all the provisions of the 1987 Constitution are presumed self-executing,[132] there are some which this Court has declared ***not judicially enforceable***, Article XIII being one,[133] particularly Section 3 thereof, the nature of which, this Court, in *Agabon v. National Labor Relations Commission,*[134] has described to be not self-actuating:

> Thus, the constitutional mandates of protection to labor and security of tenure may be deemed as

> self-executing in the sense that these are automatically acknowledged and observed without need for any enabling legislation. However, to declare that the constitutional provisions are enough to guarantee the full exercise of the rights embodied therein, and the realization of ideals therein expressed, would be impractical, if not unrealistic. The espousal of such view presents the dangerous tendency of being overbroad and exaggerated. The guarantees of "full protection to labor" and "security of tenure", when examined in isolation, are facially unqualified, and the broadest interpretation possible suggests a blanket shield in favor of labor against any form of removal regardless of circumstance. This interpretation implies an unimpeachable right to continued employment-a utopian notion, doubtless-but still hardly within the contemplation of the framers. Subsequent legislation is still needed to define the parameters of these guaranteed rights to ensure the protection and promotion, not only the rights of the labor sector, but of the employers' as well. Without specific and pertinent legislation, judicial bodies will be at a loss, formulating their own conclusion to approximate at least the aims of the Constitution.
>
> ***Ultimately, therefore, Section 3 of Article XIII cannot, on its own, be a source of a positive enforceable right*** to stave off the dismissal of an employee for just cause owing to the failure to serve proper notice or hearing. As manifested by several framers of the 1987 Constitution, the provisions on social justice require legislative enactments for their enforceability.[135] (Emphasis added)

Thus, Section 3, Article XIII cannot be treated as a principal source of direct enforceable rights, for the violation of which the questioned clause may be declared unconstitutional. It may unwittingly risk opening the floodgates of litigation to every worker or union over every conceivable violation of so broad a concept as social justice for labor.

It must be stressed that Section 3, Article XIII does not directly bestow on the working class any actual enforceable right, but merely clothes it with the status of a sector for whom the Constitution urges protection through executive or legislative action and ***judicial recognition***. Its utility is best limited to being an impetus not just for the executive and legislative departments, but for the judiciary as well, to protect the welfare of the working class**.** And it was in fact consistent with that constitutional agenda that the Court in *Central Bank (now Bangko Sentral ng Pilipinas) Employee Association, Inc. v. Bangko Sentral ng Pilipinas,* penned by then Associate Justice now Chief Justice Reynato S. Puno, formulated the judicial precept that when the challenge to a statute is premised on the perpetuation of prejudice against persons favored by the Constitution with special protection -- such as the working class or a section thereof -- the Court may recognize the existence of a suspect classification and subject the same to strict judicial scrutiny.

The view that the concepts of suspect classification and strict judicial scrutiny formulated in *Central Bank Employee Association* exaggerate the significance of Section 3, Article XIII is a groundless apprehension. *Central Bank* applied Article XIII in conjunction with the equal protection clause. Article XIII, by itself, without the application of the equal protection clause, has no life or force of its own as elucidated in *Agabon.*

Along the same line of reasoning, the Court further holds that the subject clause violates

petitioner's right to substantive due process, for it deprives him of property, consisting of monetary benefits, without any existing valid governmental purpose.[136]

The argument of the Solicitor General, that the actual purpose of the subject clause of limiting the entitlement of OFWs to their three-month salary in case of illegal dismissal, is to give them a better chance of getting hired by foreign employers. This is plain speculation. As earlier discussed, there is nothing in the text of the law or the records of the deliberations leading to its enactment or the pleadings of respondent that would indicate that there is an existing governmental purpose for the subject clause, or even just a pretext of one.

The subject clause does not state or imply any definitive governmental purpose; and it is for that precise reason that the clause violates not just petitioner's right to equal protection, but also her right to substantive due process under Section 1,[137] Article III of the Constitution.

The subject clause being unconstitutional, petitioner is entitled to his salaries for the entire unexpired period of nine months and 23 days of his employment contract, pursuant to law and jurisprudence prior to the enactment of R.A. No. 8042.

On the Third Issue

Petitioner contends that his overtime and leave pay should form part of the salary basis in the computation of his monetary award, because these are fixed benefits that have been stipulated into his contract.

Petitioner is mistaken.

The word *salaries* in Section 10(5) does not include overtime and leave pay. For seafarers like petitioner, DOLE Department Order No. 33, series 1996, provides a Standard Employment Contract of Seafarers, in which salary is understood as the basic wage, exclusive of overtime, leave pay and other bonuses; whereas overtime pay is compensation for all work performed in excess of the regular eight hours, and holiday pay is compensation for any work performed on designated rest days and holidays.

By the foregoing definition alone, there is no basis for the automatic inclusion of overtime and holiday pay in the computation of petitioner's monetary award, unless there is evidence that he performed work during those periods. As the Court held in *Centennial Transmarine, Inc. v. Dela*

Cruz,[138]

However, the payment of overtime pay and leave pay should be disallowed in light of our ruling in Cagampan v. National Labor Relations Commission, to wit:

> The rendition of overtime work and the submission of sufficient proof that said was actually performed are conditions to be satisfied before a seaman could be entitled to overtime pay which should be computed on the basis of 30% of the basic monthly salary. In short, the contract provision guarantees the right to overtime pay but the entitlement to such benefit must first be established.
>
> In the same vein, the claim for the day's leave pay for the unexpired portion of the contract is unwarranted since the same is given during the actual service of the seamen.

WHEREFORE, the Court **GRANTS** the Petition. The subject clause or for three months for every year of the unexpired term, whichever is less in the 5th paragraph of Section 10 of Republic Act No. 8042 is **DECLARED UNCONSTITUTIONAL**; and the December 8, 2004 Decision and April 1, 2005 Resolution of the Court of Appeals are **MODIFIED** to the effect that petitioner is **AWARDED** his salaries for the entire unexpired portion of his employment contract consisting of nine months and 23 days computed at the rate of US$1,400.00 per month.

No costs.

SO ORDERED.

MA. ALICIA AUSTRIA-MARTINEZ
Associate Justice

WE CONCUR:

REYNATO S. PUNO
Chief Justice

LEONARDO A. QUISUMBING **CONSUELO YNARES-SANTIAGO**
Associate Justice Associate Justice

ANTONIO T. CARPIO
Associate Justice

RENATO C. CORONA
Associate Justice

CONCHITA CARPIO MORALES
Associate Justice

DANTE O. TINGA
Associate Justice

(On leave)
MINITA V. CHICO-NAZARIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

ANTONIO EDUARDO B. NACHURA
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

(see concurring opinion)
ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

REYNATO S. PUNO
Chief Justice

[1] http://www.un.org/News/Press/docs/2007/sgsm11084.doc.htm.

[2] Migrant Workers and Overseas Filipinos Act of 1995, effective July 15, 1995.

[3] Penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Lucas P. Bersamin and Celia C. Librea-Leagogo; *rollo*, p. 231.

[4] Id. at 248.

[5] *Rollo*, p. 57.

[6] Id. at 58.

[7] Id. at 59.

[8] Id. at 48.

[9] Id. at 55.

[10] According to petitioner, this amount represents the pro-rated difference between the salary of US$2,590.00 per month which he was supposed to receive as Chief Officer from March 19, 1998 to April 30, 1998 and the salary of US$1,850.00 per month which he was actually paid as Second Officer for the same period. See LA Decision, *rollo*, pp. 107 and 112.

[11] Position Paper, id. at 53-54.

[12] The LA awarded petitioner US$45.00 out of the US$1,480.00 salary differential to which petitioner is entitled in view of his having received from respondents US$1,435.00 as evidenced by receipts marked as Annexes F, G and H, id. at 319-321.

[13] Id. at 114.

[14] *Rollo*, pp. 111-112.

[15] Id. at 124.

[16] Id. at 115.

[17] G.R. No. 129584, December 3, 1998, 299 SCRA 608.

[18] Appeal Memorandum, *rollo*, p. 121.

[19] Id. at 134.

[20] NLRC Decision, *rollo*, p. 140.

[21] Id. at 146-150.

[22] Id. at 153.

[23] Id. at 155.

[24] Id. at 166-177.

[25] CA Decision, id. at 239-241.

[26] Id. at 242.

[27] Id. at 248.

[28] Petition, *rollo*, p. 28.

[29] Id. at 787.

[30] Id. at 799.

[31] *Rollo*, p. 282

[32] Memorandum for Petitioner, id. at 741-742.

[33] Id. at 746-753.

[34] Section 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

[35] *Rollo*, pp. 763-766.

[36] Petition, id. at 735.

[37] Memorandum of the Solicitor General, *rollo*, p. 680.

[38] Memorandum for Petitioner, id. at 755.

[39] Id. at 761-763.

[40] *Rollo*, pp. 645-646 and 512-513.

[41] Alfredo L. Benipayo was Solicitor General at the time the Comment was filed. Antonio Eduardo B. Nachura (now an Associate Justice of the Supreme Court) was Solicitor General when the Memorandum was filed.

[42] Memorandum of the Solicitor General, id. at 662-665.

[43] G.R. No. 113658, March 31, 1995, 243 SCRA 190.

[44] G.R. No. 110524, July 29, 2002, 385 SCRA 306.

[45] Memorandum of the Solicitor General, *rollo*, pp. 668-678.

[46] Id. at 682.

[47] *The Province of North Cotabato v. The Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, G.R. No. 183591 October 14, 2008.

[48] *Automotive Industry Workers Alliance v. Romulo*, G.R. No. 157509, January 18, 2005, 449 SCRA 1.

[49] *David v. Macapagal-Arroyo*, G.R. No. 171396, May 3, 2006, 489 SCRA 160.

[50] *Arceta v. Mangrobang*, G.R. No. 152895, June 15, 2004, 432 SCRA 136.

[51] *Moldex Realty, Inc. v. Housing and Land Use Regulatory Board*, G.R. No. 149719, June 21, 2007, 525 SCRA 198; *Marasigan v. Marasigan*, G.R. No. 156078, March 14, 2008, 548 SCRA 409.

[52] *Matibag v. Benipayo*, G.R. No. 149036, April 2, 2002, 380 SCRA 49.

[53] *Rollo*, p. 145.

[54] Id. at 166.

[55] *Smart Communications, Inc. v. National Telecommunications Commission*, G.R. No. 151908, August 12, 2003, 408 SCRA 678.

[56] *Equi-Asia Placement, Inc. v. Department of Foreign Affairs,* G.R. No. 152214, September 19, 2006, 502 SCRA 295.

[57] Memorandum for Petitioner, *rollo*, pp. 741-742.

[58] *Ortigas & Co., Ltd. v. Court of Appeals*, G.R. No. 126102, December 4, 2000, 346 SCRA 748.

[59] *Picop Resources, Inc. v. Base Metals Mineral Resources Corporation*, G.R. No. 163509, December 6, 2006, 510 SCRA 400.

[60] *Walker v. Whitehead*, 83 U.S. 314 (1873); *Wood v. Lovett*, 313 U.S. 362, 370 (1941); *Intrata-Assurance Corporation v. Republic of the Philippines*, G.R. No. 156571, July 9, 2008; *Smart Communications, Inc. v. City of Davao*, G.R. No. 155491, September 16, 2008.

[61] *Executive Secretary v. Court of Appeals*, G.R. No. 131719, May 25, 2004, 429 SCRA 81, citing *JMM Promotion and Management, Inc. v. Court of Appeals*, G.R. No. 120095, August 5, 1996, 260 SCRA 319.

[62] *Ortigas & Co., Ltd. v. Court of Appeals*, supra note 58.

[63] Section 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

[64] 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.

[65] See *City of Manila v. Laguio*, G.R. No. 118127, April 12, 2005, 455 SCRA 308; *Pimentel III v. Commission on Elections*, G.R. No. 178413, March 13, 2008, 548 SCRA 169.

[66] *League of Cities of the Philippines v. Commission on Elections* G.R. No. 176951, November 18, 2008; *Beltran v. Secretary of Health*, G.R. No. 139147,November 25, 2005, 476 SCRA 168.

[67] *Association of Small Landowners in the Philippines v. Secretary of Agrarian Reform*, G.R. No. 78742, July 14, 1989, 175 SCRA 343.

[68] *Los Angeles v. Almeda Books, Inc*., 535 U.S. 425 (2002); *Craig v. Boren*, 429 US 190 (1976).

[69] There is also the "heightened scrutiny" standard of review which is less demanding than "strict scrutiny" but more demanding than the standard rational relation test. Heightened scrutiny has generally been applied to cases that involve discriminatory classifications based on sex or illegitimacy, such as in *Plyler v. Doe*, 457 U.S. 202, where a heightened scrutiny standard was used to invalidate a State's denial to the children of illegal aliens of the free public education that it made available to other residents.

[70] *America v. Dale*, 530 U.S. 640 (2000); *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. (2007); http://www.supremecourtus.gov/opinions/06pdf/05-908.pdf.

[71] *Adarand Constructors, Inc. v. Pea*, 515 US 230 (1995).

[72] *Grutter v. Bollinger*, 539 US 306 (2003); *Bernal v. Fainter*, 467 US 216 (1984).

[73] The concept of suspect classification first emerged in the famous footnote in the opinion of Justice Harlan Stone in *U.S. v. Carolene Products Co*., 304 U.S. 144 (1938), the full text of which footnote is reproduced below:

There may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten amendments, which are deemed equally specific when held to be embraced within the Fourteenth. See Stromberg v. California, 283 U.S. 359, 369-370; Lovell v. Griffin, 303 U.S. 444, 452.

It is unnecessary to consider now whether legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation. On restrictions upon the right to vote, see Nixon v. Herndon, 273 U.S. 536; Nixon v. Condon, 286 U.S. 73; on restraints upon the dissemination of information, see Near v. Minnesota ex rel. Olson, 283 U.S. 697, 713-714, 718-720, 722; Grosjean v. American Press Co., 297 U.S. 233; Lovell v. Griffin, supra; on interferences with political organizations, see Stromberg v. California, supra, 369; Fiske v. Kansas, 274 U.S. 380; Whitney v. California, 274 U.S. 357, 373-378; Herndon v. Lowry, 301 U.S. 242, and see Holmes, J., in Gitlow v. New York, 268 U.S. 652, 673; as to prohibition of peaceable assembly, see De Jonge v. Oregon, 299 U.S. 353, 365.

Nor need we enquire whether similar considerations enter into the review of statutes directed at particular religious, Pierce v. Society of Sisters, 268 U.S. 510, or national, Meyer v. Nebraska, 262 U.S. 390; Bartels v. Iowa, 262 U.S. 404; Farrington v. Tokushige, 273 U.S. 284, or racial minorities, Nixon v. Herndon, supra; Nixon v. Condon, supra: whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry. Compare McCulloch v. Maryland, 4 Wheat. 316, 428; South Carolina v. Barnwell Bros., 303 U.S. 177, 184, n 2, and cases cited.

[74] *Korematsu v. United States*, 323 U.S. 214 (1944); *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978).

[75] *Frontiero v. Richardson*, 411 U.S. 677 (1973); *U.S. v. Virginia*, 518 U.S. 515 (1996).

[76] *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973).

[77] G.R. No. 148208, December 15, 2004, 446 SCRA 299.

[78] *Rollo*, pp. 727 and 735.

[79] 371 Phil. 827 (1999).

[80] Id. at 840-841.

[81] G.R. No. 131656, October 20, 1998, 297 SCRA 727.

[82] Id.

[83] Supra note 17.

[84] G.R. No. 166363, August 15, 2006, 498 SCRA 639.

[85] G.R. No. 162195, April 8, 2008, 550 SCRA 600.

[86] G.R. No. 180719, August 22, 2008.

[87] G.R. No. 172031, July 14, 2008, 558 SCRA 279.

[88] G.R. No. 157534, June 18, 2003 (Resolution).

[89] G.R. No. 153750, January 25, 2006, 480 SCRA 100.

[90] G.R. No. 148418, July 28, 2005, 464 SCRA 314.

[91] G.R. No. 148407, November 12, 2003, 415 SCRA 720.

[92] G.R. No. 156381, October 14, 2005, 473 SCRA 120.

[93] G.R. No. 157373, July 27, 2004, 435 SCRA 342.

[94] G.R. No. 144786, April 15, 2004, 427 SCRA 732.

[95] G.R. No. 177948, March 14, 2008, 548 SCRA 712.

[96] G.R. No. 151303, April 15, 2005, 456 SCRA 313.

[97] *Asian Center v. National Labor Relations Commission*, supra note 81.

[98] G.R. No. 143949, August 9, 2001, 362 SCRA 571.

[99] G.R. No. 123354, November 19, 1996, 264 SCRA 418.

[100] G.R. No. 109390, March 7, 1996, 254 SCRA 457.

[101] G.R. No. 112096, January 30, 1996, 252 SCRA 588.

[102] G.R. No. 145587, October 26, 2007, 537 SCRA 409.

[103] G.R. No. 123901, September 22, 1999, 315 SCRA 23.

[104] G.R. No. 157975, June 26, 2007, 525 SCRA 586.

[105] www.merriam-webster.com/dictionary visited on November 22, 2008 at 3:09.

[106] See also *Flourish,* supra note 95*;* and *Athena*, supra note 96.

[107] It is noted that both petitioner and the OSG drew comparisons between OFWs in general and local workers in general. However, the Court finds that the more relevant comparison is between OFWs whose employment is necessarily subject to a fixed term and local workers whose employment is also subject to a fixed term.

[108] Promulgated on August 6, 1888 by Queen Maria Cristina of Spain and extended to the Philippines by Royal Decree of August 8, 1888. It took effect on December 1, 1888.

[109] No. 1133, March 29, 1904, 3 SCRA 519.

[110] No. L-8431, October 30, 1958, 104 SCRA 748.

[111] See also *Wallem Philippines Shipping, Inc. v. Hon. Minister of Labor,* No. L-50734-37, February 20, 1981, 102 SCRA 835, where *Madrigal Shipping Company, Inc. v. Ogilvie* is cited.

[112] No. L-10422, January 11, 1916, 33 SCRA 162.

[113] No. L-15878, January 11, 1922, 42 SCRA 660.

[114] 7 Phil. 268 (1907).

[115] See also *Knust v. Morse*, 41 Phil 184 (1920).

[116] *Brent School, Inc. v. Zamora*, No. L-48494, February 5, 1990, 181 SCRA 702.

[117] No. L-22608, June 30, 1969, 28 SCRA 699.

[118] The Labor Code itself does not contain a specific provision for local workers with fixed-term employment contracts. As the Court observed in *Brent School, Inc.*, the concept of fixed-term employment has slowly faded away from our labor laws, such that reference to our labor laws is of limited use in determining the monetary benefits to be awarded to fixed-term workers who are illegally dismissed.

[119] No. L-65545, July 9, 1986., 142 SCRA 542.

[120] G.R. No. 100399, August 4, 1992, 212 SCRA 132.

[121] G.R. No. 111212, January 22, 1996, 252 SCRA 116.

[122] G.R. No. 113363, August 24, 1999, 313 SCRA 1.

[123] G.R. No. 113911, January 23, 1998, 284 SCRA 656.

[124] See *Estrada v. Escritor*, A.M. No. P-02-1651, August 4, 2003, 408 SCRA 1.

[125] Id.

[126] *Roe v. Wade*, 410 U.S. 113 (1971); see also *Carey v. Population Service International*, 431 U.S. 678 (1977).

[127] *Sabio v. Gordon*, G.R. Nos. 174340, 174318, 174177, October 16, 2006, 504 SCRA 704.

[128] Comment, *rollo*, p. 555.

[129] Memorandum of the Solicitor General, id. at 682-683

[130] Id. at p. 693.

[131] 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.

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 to investments, and to expansion and growth.

[132] *Manila Prince Hotel v. Government Service Insurance System*, G.R. No. 122156, February 3, 1997, 267 SCRA 408.

[133] *Basco v. Philippine Amusement and Gaming Corporation*, G.R. No. 91649, May 14, 1991, 197 SCRA 52.

[134] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

[135] *Agabon v. National Labor Relations Commission*, supra note 134, at 686.

[136] *Associated Communications and Wireless Services, Ltd. v. Dumlao*, G. R. No. 136762, November 21, 2002, 392 SCRA 269.

[137] Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

[138] G.R. No. 180719, August 22, 2008. See also *PCL Shipping Philippines, Inc. v. National Labor Relations Commission*. G.R. No. 153031, December 14, 2006, 511 SCRA 44.