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[G.R. No. 170139, August 05, 2014]

SAMEER OVERSEAS PLACEMENT AGENCY, INC., PETITIONER, VS. JOY C. CABILES, RESPONDENT.

D E C I S I O N

LEONEN, J.:

This case involves an overseas Filipino worker with shattered dreams. It is our duty, given the facts and the law, to approximate justice for her.

We are asked to decide a petition for review[1] on certiorari assailing the Court of Appeals' decision[2] dated June 27, 2005. This decision partially affirmed the National Labor Relations Commission's resolution dated March 31, 2004,[3] declaring respondent's dismissal illegal, directing petitioner to pay respondent's three-month salary equivalent to New Taiwan Dollar (NT$) 46,080.00, and ordering it to reimburse the NT$3,000.00 withheld from respondent, and pay her NT$300.00 attorney's fees.[4]

Petitioner, Sameer Overseas Placement Agency, Inc., is a recruitment and placement agency.[5] Responding to an ad it published, respondent, Joy C. Cabiles, submitted her application for a quality control job in Taiwan.[6]

Joy's application was accepted.[7] Joy was later asked to sign a one-year employment contract for a monthly salary of NT$15,360.00.[8] She alleged that Sameer Overseas Agency required her to pay a placement fee of P70,000.00 when she signed the employment contract.[9]

Joy was deployed to work for Taiwan Wacoal, Co. Ltd. (Wacoal) on June 26, 1997.[10] She alleged that in her employment contract, she agreed to work as quality control for one year.[11] In Taiwan, she was asked to work as a cutter.[12]

Sameer Overseas Placement Agency claims that on July 14, 1997, a certain Mr. Huwang from Wacoal informed Joy, without prior notice, that she was terminated and that "she should immediately report to their office to get her salary and passport."[13] She was asked to "prepare for immediate repatriation."[14]

Joy claims that she was told that from June 26 to July 14, 1997, she only earned a total of NT$9,000.[15] According to her, Wacoal deducted NT$3,000 to cover her plane ticket to Manila.[16]

On October 15, 1997, Joy filed a complaint[17] with the National Labor Relations Commission against petitioner and Wacoal. She claimed that she was illegally dismissed.[18] She asked for the return of her placement fee, the withheld amount for repatriation costs, payment of her salary for 23 months as well as moral and exemplary damages.[19] She identified Wacoal as Sameer Overseas Placement Agency's foreign principal.[20]

Sameer Overseas Placement Agency alleged that respondent's termination was due to her inefficiency, negligence in her duties, and her "failure to comply with the work requirements [of] her foreign [employer]."[21] The agency also claimed that it did not ask for a placement fee of ?70,000.00.[22] As evidence, it showed Official Receipt No. 14860 dated June 10, 1997, bearing the amount of ?20,360.00.[23] Petitioner added that Wacoal's accreditation with petitioner had already been transferred to the Pacific Manpower & Management Services, Inc. (Pacific) as of August 6, 1997.[24] Thus, petitioner asserts that it was already substituted by Pacific Manpower.[25]

Pacific Manpower moved for the dismissal of petitioner's claims against it.[26] It alleged that there was no employer-employee relationship between them.[27] Therefore, the claims against it were outside the jurisdiction of the Labor Arbiter.[28] Pacific Manpower argued that the employment contract should first be presented so that the employer's contractual obligations might be identified.[29] It further denied that it assumed liability for petitioner's illegal acts.[30]

On July 29, 1998, the Labor Arbiter dismissed Joy's complaint.[31] Acting Executive Labor Arbiter Pedro C. Ramos ruled that her complaint was based on mere allegations.[32] The Labor Arbiter found that there was no excess payment of placement fees, based on the official receipt presented by petitioner.[33] The Labor Arbiter found unnecessary a discussion on petitioner's transfer of obligations to Pacific[34] and considered the matter immaterial in view of the dismissal of respondent's complaint.[35]

Joy appealed[36] to the National Labor Relations Commission.

In a resolution[37] dated March 31, 2004, the National Labor Relations Commission declared that Joy was illegally dismissed.[38] It reiterated the doctrine that the burden of proof to show that the dismissal was based on a just or valid cause belongs to the employer.[39] It found that Sameer Overseas Placement Agency failed to prove that there were just causes for termination.[40] There was no sufficient proof to show that respondent was inefficient in her work and that she failed to comply with company requirements.[41] Furthermore, procedural due process was not observed in terminating respondent.[42]

The National Labor Relations Commission did not rule on the issue of reimbursement of

placement fees for lack of jurisdiction.[43] It refused to entertain the issue of the alleged transfer of obligations to Pacific.[44] It did not acquire jurisdiction over that issue because Sameer Overseas Placement Agency failed to appeal the Labor Arbiter's decision not to rule on the matter.[45]

The National Labor Relations Commission awarded respondent only three (3) months worth of salary in the amount of NT$46,080, the reimbursement of the NT$3,000 withheld from her, and attorney's fees of NT$300.[46]

The Commission denied the agency's motion for reconsideration[47] dated May 12, 2004 through a resolution[48] dated July 2, 2004.

Aggrieved by the ruling, Sameer Overseas Placement Agency caused the filing of a petition[49] for certiorari with the Court of Appeals assailing the National Labor Relations Commission's resolutions dated March 31, 2004 and July 2, 2004.

The Court of Appeals[50] affirmed the decision of the National Labor Relations Commission with respect to the finding of illegal dismissal, Joy's entitlement to the equivalent of three months worth of salary, reimbursement of withheld repatriation expense, and attorney's fees.[51] The Court of Appeals remanded the case to the National Labor Relations Commission to address the validity of petitioner's allegations against Pacific.[52] The Court of Appeals held, thus:

> Although the public respondent found the dismissal of the complainant-respondent illegal, we should point out that the NLRC merely awarded her three (3) months backwages or the amount of NT$46,080.00, which was based upon its finding that she was dismissed without due process, a finding that we uphold, given petitioner's lack of worthwhile discussion upon the same in the proceedings below or before us. Likewise we sustain NLRC's finding in regard to the reimbursement of her fare, which is squarely based on the law; as well as the award of attorney's fees.
>
> But we do find it necessary to remand the instant case to the public respondent for further proceedings, for the purpose of addressing the validity or propriety of petitioner's third-party complaint against the transferee agent or the Pacific Manpower & Management Services, Inc. and Lea G. Manabat. We should emphasize that as far as the decision of the NLRC on the claims of Joy Cabiles, is concerned, the same is hereby affirmed with finality, and we hold petitioner liable thereon, but without prejudice to further hearings on its third party complaint against Pacific for reimbursement.
>
> **WHEREFORE**, premises considered, the assailed Resolutions are hereby partly **AFFIRMED** in accordance with the foregoing discussion, but subject to the caveat embodied in the last sentence. No costs.

SO ORDERED.[53]

Dissatisfied, Sameer Overseas Placement Agency filed this petition.[54]

We are asked to determine whether the Court of Appeals erred when it affirmed the ruling of the National Labor Relations Commission finding respondent illegally dismissed and awarding her three months' worth of salary, the reimbursement of the cost of her repatriation, and attorney's fees despite the alleged existence of just causes of termination.

Petitioner reiterates that there was just cause for termination because there was a finding of Wacoal that respondent was inefficient in her work.[55] Therefore, it claims that respondent's dismissal was valid.[56]

Petitioner also reiterates that since Wacoal's accreditation was validly transferred to Pacific at the time respondent filed her complaint, it should be Pacific that should now assume responsibility for Wacoal's contractual obligations to the workers originally recruited by petitioner.[57]

Sameer Overseas Placement Agency's petition is without merit. We find for respondent.

I

Sameer Overseas Placement Agency failed to show that there was just cause for causing Joy's dismissal. The employer, Wacoal, also failed to accord her due process of law.

Indeed, employers have the prerogative to impose productivity and quality standards at work.[58] They may also impose reasonable rules to ensure that the employees comply with these standards.[59] Failure to comply may be a just cause for their dismissal.[60] Certainly, employers cannot be compelled to retain the services of an employee who is guilty of acts that are inimical to the interest of the employer.[61] While the law acknowledges the plight and vulnerability of workers, it does not "authorize the oppression or self-destruction of the employer."[62] Management prerogative is recognized in law and in our jurisprudence.

This prerogative, however, should not be abused. It is "tempered with the employee's right to security of tenure."[63] Workers are entitled to substantive and procedural due process before termination. They may not be removed from employment without a valid or just cause as determined by law and without going through the proper procedure.

Security of tenure for labor is guaranteed by our Constitution.[64]

Employees are not stripped of their security of tenure when they move to work in a

different jurisdiction. With respect to the rights of overseas Filipino workers, we follow the principle of *lex loci contractus*.

Thus, in *Triple Eight Integrated Services, Inc. v. NLRC,*[65] this court noted:

> *Petitioner likewise attempts to sidestep the medical certificate requirement by contending that since Osdana was working in Saudi Arabia, her employment was subject to the laws of the host country*. Apparently, petitioner hopes to make it appear that the labor laws of Saudi Arabia do not require any certification by a competent public health authority in the dismissal of employees due to illness.
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> Again, petitioner's argument is without merit.
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> First, established is the rule that ***lex loci contractus (the law of the place where the contract is made) governs in this jurisdiction. There is no question that the contract of employment in this case was perfected here in the Philippines. Therefore, the Labor Code, its implementing rules and regulations, and other laws affecting labor apply in this case***. Furthermore, settled is the rule that the courts of the forum will not enforce any foreign claim obnoxious to the forum's public policy. Here in the Philippines, employment agreements are more than contractual in nature. The Constitution itself, in Article XIII, Section 3, guarantees the special protection of workers, to wit:
>
> > 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.
> >
> > . . . .
>
> This public policy should be borne in mind in this case because to allow foreign employers to determine for and by themselves whether an overseas contract worker may be dismissed on the ground of illness would encourage illegal or arbitrary pre-termination of employment contracts.[66] (Emphasis supplied, citation omitted)

Even with respect to fundamental procedural rights, this court emphasized in *PCL Shipping Philippines, Inc. v. NLRC*,[67] to wit:

> Petitioners admit that they did not inform private respondent in writing of the charges against him and that they failed to conduct a formal investigation to give him opportunity to air his side. *However, petitioners contend that the twin requirements of notice and hearing applies strictly only when the employment is within the Philippines and that these need not be strictly observed in cases of international maritime or overseas employment.*
>
> The Court does not agree. ***The provisions of the Constitution as well as the Labor Code which afford protection to labor apply to Filipino employees whether working within the Philippines or abroad. Moreover, the principle of lex loci contractus (the law of the place where the contract is made) governs in this jurisdiction***. In the present case, it is not disputed that the Contract of Employment entered into by and between petitioners and private respondent was executed here in the Philippines with the approval of the Philippine Overseas Employment Administration (POEA). Hence, the Labor Code together with its implementing rules and regulations and other laws affecting labor apply in this case.[68] (Emphasis supplied, citations omitted)

By our laws, overseas Filipino workers (OFWs) may only be terminated for a just or authorized cause and after compliance with procedural due process requirements.

Article 282 of the Labor Code enumerates the just causes of termination by the employer. Thus:

> Art. 282. Termination by employer. An employer may terminate an employment for any of the following causes:
>
> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
>
> (b) Gross and habitual neglect by the employee of his duties;
>
> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
>
> (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
>
> (e) Other causes analogous to the foregoing.

Petitioner's allegation that respondent was inefficient in her work and negligent in her duties[69] may, therefore, constitute a just cause for termination under Article 282(b), but only if petitioner was able to prove it.

The burden of proving that there is just cause for termination is on the employer. "The employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause."[70] Failure to show that there was valid or just cause for termination would necessarily mean that the dismissal was illegal.[71]

To show that dismissal resulting from inefficiency in work is valid, it must be shown that: 1) the employer has set standards of conduct and workmanship against which the employee will be judged; 2) the standards of conduct and workmanship must have been communicated to the employee; and 3) the communication was made at a reasonable time prior to the employee's performance assessment.

This is similar to the law and jurisprudence on probationary employees, which allow termination of the employee only when there is "just cause or when [the probationary employee] fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his [or her] engagement."[72]

However, we do not see why the application of that ruling should be limited to probationary employment. That rule is basic to the idea of security of tenure and due process, which are guaranteed to all employees, whether their employment is probationary or regular.

The pre-determined standards that the employer sets are the bases for determining the probationary employee's fitness, propriety, efficiency, and qualifications as a regular employee. Due process requires that the probationary employee be informed of such standards at the time of his or her engagement so he or she can adjust his or her character or workmanship accordingly. Proper adjustment to fit the standards upon which the employee's qualifications will be evaluated will increase one's chances of being positively assessed for regularization by his or her employer.

Assessing an employee's work performance does not stop after regularization. The employer, on a regular basis, determines if an employee is still qualified and efficient, based on work standards. Based on that determination, and after complying with the due process requirements of notice and hearing, the employer may exercise its management prerogative of terminating the employee found unqualified.

The regular employee must constantly attempt to prove to his or her employer that he or she meets all the standards for employment. This time, however, the standards to be met are set for the purpose of retaining employment or promotion. The employee cannot be expected to meet any standard of character or workmanship if such standards were not communicated to him or her. Courts should remain vigilant on allegations of the employer's failure to communicate work standards that would govern one's employment "if [these are] to discharge in good faith [their] duty to

adjudicate."[73]

In this case, petitioner merely alleged that respondent failed to comply with her foreign employer's work requirements and was inefficient in her work.[74] *No evidence was shown to support such allegations. Petitioner did not even bother to specify what requirements were not met, what efficiency standards were violated, or what particular acts of respondent constituted inefficiency.*

There was also no showing that respondent was sufficiently informed of the standards against which her work efficiency and performance were judged. ***The parties' conflict as to the position held by respondent showed that even the matter as basic as the job title was not clear****.*

The bare allegations of petitioner are not sufficient to support a claim that there is just cause for termination. There is no proof that respondent was legally terminated.

Petitioner failed to comply with the due process requirements

Respondent's dismissal less than one year from hiring and her repatriation on the same day show not only failure on the part of petitioner to comply with the requirement of the existence of just cause for termination. They patently show that the employers did not comply with the due process requirement.

A valid dismissal requires both a valid cause and adherence to the valid procedure of dismissal.[75] The employer is required to give the charged employee at least two written notices before termination.[76] One of the written notices must inform the employee of the particular acts that may cause his or her dismissal.[77] The other notice must "[inform] the employee of the employer's decision."[78] Aside from the notice requirement, the employee must also be given "an opportunity to be heard."[79]

Petitioner failed to comply with the twin notices and hearing requirements. Respondent started working on June 26, 1997. She was told that she was terminated on July 14, 1997 effective on the same day and barely a month from her first workday. She was also repatriated on the same day that she was informed of her termination. The abruptness of the termination negated any finding that she was properly notified and given the opportunity to be heard. Her constitutional right to due process of law was violated.

II

Respondent Joy Cabiles, having been illegally dismissed, is entitled to her salary for the unexpired portion of the employment contract that was violated together with attorney's fees and reimbursement of amounts withheld from her salary.

Section 10 of Republic Act No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, states that overseas workers who were terminated

without just, valid, or authorized cause "shall be entitled to the full reimbursement of his placement fee with interest of twelve (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."

> 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 filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages.
>
> The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provisions [sic] shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.
>
> Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract.
>
> Any compromise/amicable settlement or voluntary agreement on money claims inclusive of damages under this section shall be paid within four (4) months from the approval of the settlement by the appropriate authority.
>
> *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 (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.*
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> . . . .
>
> (Emphasis supplied)

Section 15 of Republic Act No. 8042 states that "repatriation of the worker and the transport of his [or her] personal belongings shall be the primary responsibility of the agency which recruited or deployed the worker overseas." The exception is when

"termination of employment is due solely to the fault of the worker,"[80] which as we have established, is not the case. It reads:

> SEC. 15. REPATRIATION OF WORKERS; EMERGENCY REPATRIATION FUND. – The repatriation of the worker and the transport of his personal belongings shall be the primary responsibility of the agency which recruited or deployed the worker overseas. All costs attendant to repatriation shall be borne by or charged to the agency concerned and/or its principal. Likewise, the repatriation of remains and transport of the personal belongings of a deceased worker and all costs attendant thereto shall be borne by the principal and/or local agency. However, in cases where the termination of employment is due solely to the fault of the worker, the principal/employer or agency shall not in any manner be responsible for the repatriation of the former and/or his belongings.
>
> . . . .

The Labor Code[81] also entitles the employee to 10% of the amount of withheld wages as attorney's fees when the withholding is unlawful.

The Court of Appeals affirmed the National Labor Relations Commission's decision to award respondent NT$46,080.00 or the three-month equivalent of her salary, attorney's fees of NT$300.00, and the reimbursement of the withheld NT$3,000.00 salary, which answered for her repatriation.

We uphold the finding that respondent is entitled to all of these awards. ***The award of the three-month equivalent of respondent's salary should, however, be increased to the amount equivalent to the unexpired term of the employment contract.***

In *Serrano v. Gallant Maritime Services, Inc. and Marlow Navigation Co., Inc.*,[82] this court ruled that the clause "or for three (3) months for every year of the unexpired term, whichever is less"[83] is unconstitutional for violating the equal protection clause and substantive due process.[84]

A statute or provision which was declared unconstitutional is not a law. It "confers no rights; it imposes no duties; it affords no protection; it creates no office; it is inoperative as if it has not been passed at all."[85]

We are aware that the clause *"or for three (3) months for every year of the unexpired term, whichever is less"* was reinstated in Republic Act No. 8042 upon promulgation of Republic Act No. 10022 in 2010. Section 7 of Republic Act No. 10022 provides:

> **Section 7**. Section 10 of Republic Act No. 8042, as amended, is hereby amended to read as follows:

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 any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damage. Consistent with this mandate, the NLRC shall endeavor to update and keep abreast with the developments in the global services industry.

The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to de [sic] filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.

Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract.

Any compromise/amicable settlement or voluntary agreement on money claims inclusive of damages under this section shall be paid within thirty (30) days from approval of the settlement by the appropriate authority.

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement if [sic] his placement fee and the deductions made with interest at 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.*

In case of a final and executory judgement against a foreign employer/principal, it shall be automatically disqualified, without further proceedings, from participating in the Philippine Overseas

> Employment Program and from recruiting and hiring Filipino workers until and unless it fully satisfies the judgement award.
>
> Noncompliance with the mandatory periods for resolutions of case provided under this section shall subject the responsible officials to any or all of the following penalties:
>
> (a) 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;
>
> (b) Suspension for not more than ninety (90) days; or
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> (c) Dismissal from the service with disqualification to hold any appointive public office for five (5) years.
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> *Provided, however,* That the penalties herein provided shall be without prejudice to any liability which any such official may have incured [sic] under other existing laws or rules and regulations as a consequence of violating the provisions of this paragraph. (Emphasis supplied)

Republic Act No. 10022 was promulgated on March 8, 2010. This means that the reinstatement of the clause in Republic Act No. 8042 was not yet in effect at the time of respondent's termination from work in 1997.[86] Republic Act No. 8042 before it was amended by Republic Act No. 10022 governs this case.

When a law is passed, this court awaits an actual case that clearly raises adversarial positions in their proper context before considering a prayer to declare it as unconstitutional.

However, we are confronted with a unique situation. The law passed incorporates the exact clause already declared as unconstitutional, without any perceived substantial change in the circumstances.

This may cause confusion on the part of the National Labor Relations Commission and the Court of Appeals. At minimum, the existence of Republic Act No. 10022 may delay the execution of the judgment in this case, further frustrating remedies to assuage the wrong done to petitioner. Hence, there is a necessity to decide this constitutional issue.

Moreover, this court is possessed with the constitutional duty to "[p]romulgate rules concerning the protection and enforcement of constitutional rights."[87] When cases become moot and academic, we do not hesitate to provide for guidance to bench and bar in situations where the same violations are capable of repetition but will evade review. This is analogous to cases where there are millions of Filipinos working abroad who are bound to suffer from the lack of protection because of the restoration of an identical clause in a provision previously declared as unconstitutional.

In the hierarchy of laws, the Constitution is supreme. No branch or office of the government may exercise its powers in any manner inconsistent with the Constitution, regardless of the existence of any law that supports such exercise. The Constitution cannot be trumped by any other law. All laws must be read in light of the Constitution. Any law that is inconsistent with it is a nullity.

Thus, when a law or a provision of law is null because it is inconsistent with the Constitution, the nullity cannot be cured by reincorporation or reenactment of the same or a similar law or provision. A law or provision of law that was already declared unconstitutional remains as such unless circumstances have so changed as to warrant a reverse conclusion.

We are not convinced by the pleadings submitted by the parties that the situation has so changed so as to cause us to reverse binding precedent.

Likewise, there are special reasons of judicial efficiency and economy that attend to these cases.

The new law puts our overseas workers in the same vulnerable position as they were prior to *Serrano*. Failure to reiterate the very ratio decidendi of that case will result in the same untold economic hardships that our reading of the Constitution intended to avoid. Obviously, we cannot countenance added expenses for further litigation that will reduce their hard-earned wages as well as add to the indignity of having been deprived of the protection of our laws simply because our precedents have not been followed. There is no constitutional doctrine that causes injustice in the face of empty procedural niceties. Constitutional interpretation is complex, but it is never unreasonable.

Thus, in a resolution[88] dated October 22, 2013, we ordered the parties and the Office of the Solicitor General to comment on the constitutionality of the reinstated clause in Republic Act No. 10022.

In its comment,[89] petitioner argued that the clause was constitutional.[90] The legislators intended a balance between the employers' and the employees' rights by not unduly burdening the local recruitment agency.[91] Petitioner is also of the view that the clause was already declared as constitutional in *Serrano*.[92]

The Office of the Solicitor General also argued that the clause was valid and constitutional.[93] However, since the parties never raised the issue of the constitutionality of the clause as reinstated in Republic Act No. 10022, its contention is that it is beyond judicial review.[94]

On the other hand, respondent argued that the clause was unconstitutional because it infringed on workers' right to contract.[95]

We observe that the reinstated clause, this time as provided in Republic Act. No. 10022, violates the constitutional rights to equal protection and due process.[96]

Petitioner as well as the Solicitor General have failed to show any compelling change in the circumstances that would warrant us to revisit the precedent.

We reiterate our finding in Serrano v. Gallant Maritime that limiting wages that should be recovered by an illegally dismissed overseas worker to three months is both a violation of due process and the equal protection clauses of the Constitution.

Equal protection of the law is a guarantee that persons under like circumstances and falling within the same class are treated alike, in terms of "privileges conferred and liabilities enforced."[97] It is a guarantee against "undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality."[98]

In creating laws, the legislature has the power "to make distinctions and classifications."[99] In exercising such power, it has a wide discretion.[100]

The equal protection clause does not infringe on this legislative power.[101] A law is void on this basis, only if classifications are made arbitrarily.[102] There is no violation of the equal protection clause if the law applies equally to persons within the same class and if there are reasonable grounds for distinguishing between those falling within the class and those who do not fall within the class.[103] A law that does not violate the equal protection clause prescribes a reasonable classification.[104]

A reasonable classification "(1) must rest on substantial distinctions; (2) must be germane to the purposes of the law; (3) must not be limited to existing conditions only; and (4) must apply equally to all members of the same class."[105]

The reinstated clause does not satisfy the requirement of reasonable classification.

In *Serrano*, we identified the classifications made by the reinstated clause. It distinguished between fixed-period overseas workers and fixed-period local workers.[106] It also distinguished between overseas workers with employment contracts of less than one year and overseas workers with employment contracts of at least one year.[107] Within the class of overseas workers with at least one-year employment contracts, there was a distinction between those with at least a year left in their contracts and those with less than a year left in their contracts when they were illegally dismissed.[108]

The Congress' classification may be subjected to judicial review. In Serrano, there is a "legislative classification which impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class."[109]

Under the Constitution, labor is afforded special protection.[110] Thus, this court in *Serrano*, "[i]mbued with the same sense of 'obligation to afford protection to labor,' . . . employ[ed] the standard of strict judicial scrutiny, for it perceive[d] in the subject clause a suspect classification prejudicial to OFWs."[111]

We also noted in *Serrano* that before the passage of Republic Act No. 8042, the money claims of illegally terminated overseas and local workers with fixed-term employment were computed in the same manner.[112] Their money claims were computed based on the "unexpired portions of their contracts."[113] The adoption of the reinstated clause in Republic Act No. 8042 subjected the money claims of illegally dismissed overseas workers with an unexpired term of at least a year to a cap of three months worth of their salary.[114] There was no such limitation on the money claims of illegally terminated local workers with fixed-term employment.[115]

We observed that illegally dismissed overseas workers whose employment contracts had a term of less than one year were granted the amount equivalent to the unexpired portion of their employment contracts.[116] Meanwhile, illegally dismissed overseas workers with employment terms of at least a year were granted a cap equivalent to three months of their salary for the unexpired portions of their contracts.[117]

Observing the terminologies used in the clause, we also found that "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 reinstated clause, and their monetary benefits limited to their salaries for three months only."[118]

We do not need strict scrutiny to conclude that these classifications do not rest on any real or substantial distinctions that would justify different treatments in terms of the computation of money claims resulting from illegal termination.

Overseas workers regardless of their classifications are entitled to security of tenure, at least for the period agreed upon in their contracts. This means that they cannot be dismissed before the end of their contract terms without due process. If they were illegally dismissed, the workers' right to security of tenure is violated.

The rights violated when, say, a fixed-period local worker is illegally terminated are neither greater than nor less than the rights violated when a fixed-period overseas worker is illegally terminated. It is state policy to protect the rights of workers without qualification as to the place of employment.[119] In both cases, the workers are deprived of their expected salary, which they could have earned had they not been illegally dismissed. For both workers, this deprivation translates to economic insecurity and disparity.[120] The same is true for the distinctions between overseas workers with an employment contract of less than one year and overseas workers with at least one year of employment contract, and between overseas workers with at least a year left in their contracts and overseas workers with less than a year left in their contracts when they were illegally dismissed.

For this reason, we cannot subscribe to the argument that "[overseas workers] are contractual employees who can never acquire regular employment status, unlike local

workers"[121] because it already justifies differentiated treatment in terms of the computation of money claims.[122]

Likewise, the jurisdictional and enforcement issues on overseas workers' money claims do not justify a differentiated treatment in the computation of their money claims.[123] If anything, these issues justify an equal, if not greater protection and assistance to overseas workers who generally are more prone to exploitation given their physical distance from our government.

We also find that the classifications are not relevant to the purpose of the law, which is to "establish a higher standard of protection and promotion of the welfare of migrant workers, their families and overseas Filipinos in distress, and for other purposes."[124] Further, we find specious the argument that reducing the liability of placement agencies "redounds to the benefit of the [overseas] workers."[125]

Putting a cap on the money claims of certain overseas workers does not increase the standard of protection afforded to them. On the other hand, foreign employers are more incentivized by the reinstated clause to enter into contracts of at least a year because it gives them more flexibility to violate our overseas workers' rights. Their liability for arbitrarily terminating overseas workers is decreased at the expense of the workers whose rights they violated. Meanwhile, these overseas workers who are impressed with an expectation of a stable job overseas for the longer contract period disregard other opportunities only to be terminated earlier. They are left with claims that are less than what others in the same situation would receive. The reinstated clause, therefore, creates a situation where the law meant to protect them makes violation of rights easier and simply benign to the violator.

As Justice Brion said in his concurring opinion in Serrano:

> Section 10 of R.A. No. 8042 affects these well-laid rules and measures, and in fact provides a hidden twist affecting the principal/employer's liability. While intended as an incentive accruing to recruitment/manning agencies, *the law, as worded, simply limits the OFWs' recovery in wrongful dismissal situations. Thus, it redounds to the benefit of whoever may be liable, including the principal/employer – the direct employer primarily liable for the wrongful dismissal*. In this sense, Section 10 – read as a grant of incentives to recruitment/manning agencies – oversteps what it aims to do by effectively limiting what is otherwise the full liability of the foreign principals/employers. *Section 10, in short, really operates to benefit the wrong party and allows that party, without justifiable reason, to mitigate its liability for wrongful dismissals*. Because of this hidden twist, the limitation of liability under Section 10 cannot be an "appropriate" incentive, to borrow the term that R.A. No. 8042 itself uses to describe the incentive it envisions under its purpose clause.
>
> What worsens the situation is the chosen mode of granting the incentive: instead of a grant that, to encourage greater efforts at recruitment, is

> directly related to extra efforts undertaken, the law simply limits their liability for the wrongful dismissals of already deployed OFWs. This is effectively a legally-imposed partial condonation of their liability to OFWs, justified solely by the law's intent to encourage greater deployment efforts. Thus, the incentive, from a more practical and realistic view, is really part of a scheme to sell Filipino overseas labor *at a bargain* for purposes solely of attracting the market. . . .
>
> The so-called incentive is rendered particularly odious by its effect on the OFWs — *the benefits accruing to the recruitment/manning agencies and their principals are taken from the pockets of the OFWs* to whom the full salaries for the unexpired portion of the contract rightfully belong. Thus, the principals/employers and the recruitment/manning agencies even profit from their violation of the security of tenure that an employment contract embodies. Conversely, lesser protection is afforded the OFW, not only because of the lessened recovery afforded him or her by operation of law, but also because this same lessened recovery renders a wrongful dismissal easier and less onerous to undertake; the lesser cost of dismissing a Filipino will always be a consideration a foreign employer will take into account in termination of employment decisions. . . .[126]

Further, "[t]here 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."[127]

Along the same line, we held that the reinstated clause violates due process rights. It is arbitrary as it deprives overseas workers of their monetary claims without any discernable valid purpose.[128]

Respondent Joy Cabiles is entitled to her salary for the unexpired portion of her contract, in accordance with Section 10 of Republic Act No. 8042. The award of the three-month equivalence of respondent's salary must be modified accordingly. Since she started working on June 26, 1997 and was terminated on July 14, 1997, respondent is entitled to her salary from July 15, 1997 to June 25, 1998. "To rule otherwise would be iniquitous to petitioner and other OFWs, and would, in effect, send a wrong signal that principals/employers and recruitment/manning agencies may violate an OFW's security of tenure which an employment contract embodies and actually profit from such violation based on an unconstitutional provision of law."[129]

III

On the interest rate, the Bangko Sentral ng Pilipinas Circular No. 799 of June 21, 2013, which revised the interest rate for loan or forbearance from 12% to 6% in the absence of stipulation, applies in this case. The pertinent portions of Circular No. 799, Series of

2013, read:

> The Monetary Board, in its Resolution No. 796 dated 16 May 2013, approved the following revisions governing the rate of interest in the absence of stipulation in loan contracts, thereby amending Section 2 of Circular No. 905, Series of 1982:
>
> **Section 1**. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum.
>
> **Section 2**. In view of the above, Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions are hereby amended accordingly.
>
> This Circular shall take effect on 1 July 2013.

Through the able ponencia of Justice Diosdado Peralta, we laid down the guidelines in computing legal interest in *Nacar v. Gallery Frames*:[130]

> II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
>
> 1. When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% *per annum* to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
>
> 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% *per annum*. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or

extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.[131]

Circular No. 799 is applicable only in loans and forbearance of money, goods, or credits, and in judgments when there is no stipulation on the applicable interest rate. Further, it is only applicable if the judgment did not become final and executory before July 1, 2013.[132]

We add that Circular No. 799 is not applicable when there is a law that states otherwise. While the Bangko Sentral ng Pilipinas has the power to set or limit interest rates,[133] these interest rates do not apply when the law provides that a different interest rate shall be applied. "[A] Central Bank Circular cannot repeal a law. Only a law can repeal another law."[134]

For example, Section 10 of Republic Act No. 8042 provides that unlawfully terminated overseas workers are entitled to the reimbursement of his or her placement fee with an interest of 12% per annum. Since Bangko Sentral ng Pilipinas circulars cannot repeal Republic Act No. 8042, the issuance of Circular No. 799 does not have the effect of changing the interest on awards for reimbursement of placement fees from 12% to 6%. This is despite Section 1 of Circular No. 799, which provides that the 6% interest rate applies even to judgments.

Moreover, laws are deemed incorporated in contracts. "The contracting parties need not repeat them. They do not even have to be referred to. Every contract, thus, contains not only what has been explicitly stipulated, but the statutory provisions that have any bearing on the matter."[135] There is, therefore, an implied stipulation in contracts between the placement agency and the overseas worker that in case the overseas worker is adjudged as entitled to reimbursement of his or her placement fees, the amount shall be subject to a 12% interest per annum. This implied stipulation has the

effect of removing awards for reimbursement of placement fees from Circular No. 799's coverage.

The same cannot be said for awards of salary for the unexpired portion of the employment contract under Republic Act No. 8042. These awards are covered by Circular No. 799 because the law does not provide for a specific interest rate that should apply.

In sum, if judgment did not become final and executory before July 1, 2013 and there was no stipulation in the contract providing for a different interest rate, other money claims under Section 10 of Republic Act No. 8042 shall be subject to the 6% interest per annum in accordance with Circular No. 799.

This means that respondent is also entitled to an interest of 6% per annum on her money claims from the finality of this judgment.

IV

Finally, we clarify the liabilities of Wacoal as principal and petitioner as the employment agency that facilitated respondent's overseas employment.

Section 10 of the Migrant Workers and Overseas Filipinos Act of 1995 provides that the foreign employer and the local employment agency are jointly and severally liable for money claims including claims arising out of an employer-employee relationship and/or damages. This section also provides that the performance bond filed by the local agency shall be answerable for such money claims or damages if they were awarded to the employee.

This provision is in line with the state's policy of affording protection to labor and alleviating workers' plight.[136]

In overseas employment, the filing of money claims against the foreign employer is attended by practical and legal complications. The distance of the foreign employer alone makes it difficult for an overseas worker to reach it and make it liable for violations of the Labor Code. There are also possible conflict of laws, jurisdictional issues, and procedural rules that may be raised to frustrate an overseas worker's attempt to advance his or her claims.

It may be argued, for instance, that the foreign employer must be impleaded in the complaint as an indispensable party without which no final determination can be had of an action.[137]

The provision on joint and several liability in the Migrant Workers and Overseas Filipinos Act of 1995 assures overseas workers that their rights will not be frustrated with these complications.

The fundamental effect of joint and several liability is that "each of the debtors is liable for the entire obligation."[138] A final determination may, therefore, be achieved even if

only one of the joint and several debtors are impleaded in an action. Hence, in the case of overseas employment, either the local agency or the foreign employer may be sued for all claims arising from the foreign employer's labor law violations. This way, the overseas workers are assured that someone — the foreign employer's local agent — may be made to answer for violations that the foreign employer may have committed.

The Migrant Workers and Overseas Filipinos Act of 1995 ensures that overseas workers have recourse in law despite the circumstances of their employment. By providing that the liability of the foreign employer may be "enforced to the full extent"[139] against the local agent, the overseas worker is assured of immediate and sufficient payment of what is due them.[140]

Corollary to the assurance of immediate recourse in law, the provision on joint and several liability in the Migrant Workers and Overseas Filipinos Act of 1995 shifts the burden of going after the foreign employer from the overseas worker to the local employment agency. However, it must be emphasized that the local agency that is held to answer for the overseas worker's money claims is not left without remedy. The law does not preclude it from going after the foreign employer for reimbursement of whatever payment it has made to the employee to answer for the money claims against the foreign employer.

A further implication of making local agencies jointly and severally liable with the foreign employer is that an additional layer of protection is afforded to overseas workers. Local agencies, which are businesses by nature, are inoculated with interest in being always on the lookout against foreign employers that tend to violate labor law. Lest they risk their reputation or finances, local agencies must already have mechanisms for guarding against unscrupulous foreign employers even at the level prior to overseas employment applications.

With the present state of the pleadings, it is not possible to determine whether there was indeed a transfer of obligations from petitioner to Pacific. This should not be an obstacle for the respondent overseas worker to proceed with the enforcement of this judgment. Petitioner is possessed with the resources to determine the proper legal remedies to enforce its rights against Pacific, if any.

V

Many times, this court has spoken on what Filipinos may encounter as they travel into the farthest and most difficult reaches of our planet to provide for their families. In *Prieto v. NLRC*:[141]

> The Court is not unaware of the many abuses suffered by our overseas workers in the foreign land where they have ventured, usually with heavy hearts, in pursuit of a more fulfilling future. Breach of contract, maltreatment, rape, insufficient nourishment, sub-human lodgings, insults and other forms of debasement, are only a few of the inhumane acts to which they are subjected by their foreign employers, who probably feel they

> can do as they please in their own country. While these workers may indeed have relatively little defense against exploitation while they are abroad, that disadvantage must not continue to burden them when they return to their own territory to voice their muted complaint. There is no reason why, in their very own land, the protection of our own laws cannot be extended to them in full measure for the redress of their grievances.[142]

But it seems that we have not said enough.

We face a diaspora of Filipinos. Their travails and their heroism can be told a million times over; each of their stories as real as any other. Overseas Filipino workers brave alien cultures and the heartbreak of families left behind daily. They would count the minutes, hours, days, months, and years yearning to see their sons and daughters. We all know of the joy and sadness when they come home to see them all grown up and, being so, they remember what their work has cost them. Twitter accounts, Facetime, and many other gadgets and online applications will never substitute for their lost physical presence.

Unknown to them, they keep our economy afloat through the ebb and flow of political and economic crises. They are our true diplomats, they who show the world the resilience, patience, and creativity of our people. Indeed, we are a people who contribute much to the provision of material creations of this world.

This government loses its soul if we fail to ensure decent treatment for all Filipinos. We default by limiting the contractual wages that should be paid to our workers when their contracts are breached by the foreign employers. While we sit, this court will ensure that our laws will reward our overseas workers with what they deserve: their dignity.

Inevitably, their dignity is ours as well.

WHEREFORE, the petition is **DENIED**. The decision of the Court of Appeals is **AFFIRMED** with modification. Petitioner Sameer Overseas Placement Agency is **ORDERED** to pay respondent Joy C. Cabiles the amount equivalent to her salary for the unexpired portion of her employment contract at an interest of 6% per annum from the finality of this judgment. Petitioner is also **ORDERED** to reimburse respondent the withheld NT$3,000.00 salary and pay respondent attorney's fees of NT$300.00 at an interest of 6% per annum from the finality of this judgment.

The clause, "or for three (3) months for every year of the unexpired term, whichever is less" in Section 7 of Republic Act No. 10022 amending Section 10 of Republic Act No. 8042 is declared unconstitutional and, therefore, null and void.

SO ORDERED.

Carpio, Acting C.J., Velasco, Jr., Leonardo-De Castro, Peralta, Bersamin, Del Castillo, Villarama, Jr., Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.
Sereno, C.J., on Leave.
Brion, J., see dissenting opinion.

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[1] *Rollo,* pp. 3–29.

[2] Id. at 32–44.

[3] Id. at 125–131.

[4] Id. at 131.

[5] Id. at 3.

[6] Id. at 126.

[7] Id. at 102.

[8] Id.

[9] Id.

[10] Id. at 54 and 102.

[11] Id. at 6–7 and 195–196.

[12] Id. at 36.

[13] Id.

[14] Id.

[15] Id. at 127.

[16] Id.

[17] Id. at 53.

[18] Id.

[19] Id. at 33, 53, and 54.

[20] Id.

[21] Id. at 11.

[22] Id. at 56.

[23] Id. at 56 and 62.

[24] Id. at 57.

[25] Id.

[26] Id. at 107.

[27] Id.

[28] Id.

[29] Id. at 108.

[30] Id.

[31] Id. at 101–112.

[32] Id. at 108–110.

[33] Id. at 110.

[34] Id. at 111–112.

[35] Id.

[36] Id. at 113–123.

[37] Id. at 125–131.

[38] Id. at 131.

[39] Id. at 129.

[40] Id.

[41] Id.

[42] Id at 130.

[43] Id.

[44] Id. at 131.

[45] Id.

[46] Id.

[47] Id. at 132–137.

[48] Id. at 139–141.

[49] Id. at 142–153.

[50] Thirteenth Division, decision penned by Associate Justice Renato C. Dacudao with Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao concurring.

[51] *Rollo,* pp. 43–44.

[52] Id.

[53] Id.

[54] Id. at 3–29.

[55] Id. at 11.

[56] Id.

[57] Id. at 9–11.

[58] *Leonardo v. National Labor Relations Commission,* 389 Phil. 118, 126–127 (2000) [Per J. De Leon, Jr., Second Division].

[59] Id.

[60] Id.

[61] *San Miguel Corporation v. Ubaldo,* G.R. No. 92859, February 1, 1993, 218 SCRA 293, 301 [Per J. Campos, Jr., Second Division].

[62] Id.

[63] *Bascon v. Court of Appeals,* 466 Phil. 719, 732 (2004) [Per J. Quisumbing, Second Division].

[64] Const., art. XIII, sec. 3.

[65] 359 Phil. 955 (1998) [Per J. Romero, Third Division].

[66] Id. at 968–969.

[67] 540 Phil. 65 (2006) [Per J. Austria-Martinez, First Division].

[68] Id. at 80–81.

[69] *Rollo,* p. 11.

[70] *Hilton Heavy Equipment Corporation v. Dy,* G.R. No. 164860, February 2, 2010, 611 SCRA 329, 338 [Per J. Carpio, Second Division], citing *Dizon v. NLRC,* 259 Phil. 523, 529 (1989) [Per J. Feliciano, Third Division].

[71] *Skippers United Pacific, Inc. v. National Labor Relations Commission,* 527 Phil. 248, 257 (2006) [Per J. Austria-Martinez, First Division].

[72] LABOR CODE, art. 281; See also *Tamson's Enterprises, Inc. v. Court of Appeals*, G.R. No. 192881, November 16, 2011, 660 SCRA 374, 383 [Per J. Mendoza, Third Division].

[73] See dissenting opinion of J. Brion in *Abbott Laboratories Philippines v. Alcaraz*, G.R. No. 192571, July 23, 2013, 701 SCRA 682, 752 [Per J. Perlas-Bernabe, En Banc]. This ponencia joined J. Brion.

[74] *Rollo,* p. 129.

[75] *Skippers United Pacific, Inc. v. Doza,* et al., G.R. No. 175558, February 8, 2012, 665 SCRA 412, 426 [Per J. Carpio, Second Division].

[76] Id.

[77] Id.

[78] Id.

[79] Id.

[80] Rep. Act. No. 8042 (1995), sec. 15.

[81] Article 111. Attorney's Fees – (a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

[82] 601 Phil. 245 (2009) [Per J. Austria-Martinez, En Banc].

[83] Rep. Act. No. 8042 (1995), sec. 10, par. 5.

[84] *Serrano v. Gallant Maritime Services, Inc.,* 601 Phil. 245, 302 and 304 (2009) [Per J. Austria-Martinez, En Banc].

[85] *Yap v. Thenamaris Ship's Management,* G.R. No. 179532, May 30, 2011, 649 SCRA 369, 380 [Per J. Nachura, Second Division].

[86] See also *Skippers United Pacific, Inc. v. Doza, et al.,* G.R. No. 175558, February 8, 2012, 665 SCRA 430 [Per J. Carpio, Second Division].

[87] CONST., art. VIII, sec. 5(5).

[88] *Rollo*, pp. 266–267.

[89] Id. at 309–328.

[90] Id. at 311.

[91] Id.

[92] Id.

[93] Id. at 364–371.

[94] Id. at 371.

[95] Id. at 304.

[96] CONST., art. III, sec. 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.

[97] *Ichong v. Hernandez,* 101 Phil. 1155, 1164 (1957) [Per J. Labrador, En Banc].

[98] Id. at 1164.

[99] Id. at 1177.

[100] Id.

[101] Id. at 1164 and 1177.

[102] Id. at 1165 and 1177.

[103] Id. at 1164.

[104] *People v. Cayat*, 68 Phil. 12, 18 (1939) [Per J. Moran, En Banc].

[105] Id. at 18.

[106] *Serrano v. Gallant Maritime Services,* Inc., 601 Phil. 245, 294–298 (2009) [Per J. Austria-Martinez, En Banc].

[107] Id. at 287–292.

[108] Id. at 292–294.

[109] Id. at 282.

[110] Const., art. XIII, sec. 3.

[111] *Serrano v. Gallant Maritime Services, Inc.,* 601 Phil. 245, 286 (2009) [Per J. Austria-Martinez, En Banc].

[112] Id. at 297–298.

[113] Id. at 298.

[114] Id.

[115] Id.

[116] Id. at 287–292.

[117] Id.

[118] Id. at 293.

[119] Id. at 281.

[120] Id.

[121] Id. at 277.

[122] Id.

[123] Id. at 276–277.

[124] Rep. Act. No. 8042 (1995); See also Rep. Act No. 10022 (2010).

[125] *Serrano v. Gallant Maritime Services, Inc.,* 601 Phil. 245, 277 (2009) [Per J. Austria-Martinez, En Banc].

[126] See concurring opinion of J. Brion in *Serrano v. Gallant Maritime Services, Inc.,* 601 Phil. 245, 319–321 (2009) [Per J. Austria-Martinez, En Banc].

[127] Id. at 301.

[128] Id. at 304.

[129] *Yap v. Thenamaris Ship's Management,* G.R. No. 179532, May 30, 2011, 649 SCRA 369, 381 [Per J. Nachura, Second Division].

[130] G.R. No. 189871, August 13, 2013, 703 SCRA 439 [Per J. Peralta, En Banc].

[131] Id. at 457–458. This court modified the guidelines laid down in *Eastern Shipping Lines v. Court of Appeals,* G.R. No. 97412, July 12, 1994, 234 SCRA 78, 97 [Per J. Vitug, En Banc] to embody Bangko Sentral ng Pilipinas Circular No. 799.

[132] *Nacar v. Gallery Frames,* G.R. No. 189871, August 13, 2013, 703 SCRA 439, 457 [Per J. Peralta, En Banc].

[133] Id.

[134] *Palanca v. Court of Appeals,* G.R. No. 106685, December 2, 1994, 238 SCRA 593, 601 [Per J. Quiason, En Banc].

[135] *Maritime Company of the Philippines v. Reparations Commission*, 148-B Phil. 65, 70 (1971) [Per J. Fernando, En Banc].

[136] *ATCI Overseas Corporation v. Echin*, G.R. No. 178551, October 11, 2010, 632 SCRA 528, 533 [Per J. Carpio-Morales, Third Division], citing *Datuman v. First Cosmopolitan Manpower and Promotion Services, Inc.,* 591 Phil. 662, 673 (2008) [Per J. Leonardo-De Castro, First Division]; Migrant Workers and Overseas Filipinos Act of 1995, sec. 2(b).

[137] RULES OF COURT, Rule 3, sec. 7.

[138] *PH Credit Corporation v. Court of Appeals*, 421 Phil. 821, 832 (2001) [Per J. Panganiban, Third Division].

[139] See also C. A. Azucena, Jr., Everyone's LABOR CODE 29 (5th ed., 2007).

[140] Id.

[141] G..R. No. 93699, September 10, 1993, 226 SCRA 232 [Per J. Cruz, First Division].

[142] Id. at 239–240, also cited in *Triple Eight Integrated Services v. NLRC,* 359 Phil. 955, 968 (1998) [Per J. Romero, Third Division].

CONCURRING AND DISSENTING OPINION

BRION, *J.*:

I **concur** with the *ponencia's* conclusion that respondent Joy C. Cabiles was illegally dismissed for lack of valid cause and due process.

I **likewise concur** with the conclusion that Section 10 of Republic Act *(R.A.)* No. 8042 (Migrant Workers and Overseas Filipino Act of 1995),[1] as reinstated by R.A. No. 10022,[2] is unconstitutional in so far as it provides that:

> *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 (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****. [Emphasis and italics ours]*

My conclusion on the constitutionality of the above-quoted clause (*subject clause*) of Section 10, R.A. No. 8042, however, proceeds from a different reason and constitutional basis. I maintain the view that **the subject clause should be struck down for violation of the constitutional provisions in favor of labor, under Section 3, Article XIII, and of the substantive aspect of the due process clause, under Section 1, Article III.**

Thus, *I take* **exception** to the *ponencia's* full adoption of the ruling in *Serrano v. Gallant Maritime Services, Inc., et al*.[3] to the extent that it applies the strict scrutiny standard in invoking the equal protection guarantee. To my mind, the circumstances of this case do not justify the *ponencia's* approach of extending and expanding the use of the strict scrutiny standard in invalidating the subject clause (as reinstated in R.A. No. 8042 by R.A. No. 10022). The conclusion that the subject clause created a "suspect"

classification is simply misplaced.

The approach, sadly, only unnecessarily shifted the burden to the government to prove: (1) a compelling state interest; and (2) that the legislation is narrowly tailored to achieve the intended result. It also **unnecessarily undermines the presumed constitutionality of statutes and of the respect that the Court accords to the acts of a co-equal branch**. The differential or rational basis scrutiny, *i.e.,* where the challenged classification needs only be shown to be rationally related to serving a legitimate state interest, would have undoubtedly served the purpose without bringing these unnecessary implications.

As I maintain the same view and legal reasoning, and if only to emphasize my position in the present case, I quote below portions of my Concurring Opinion in *Serrano v. Gallant Maritime Services, Inc., et al. (Serrano Opinion)*[4] rejecting the validity of using the strict scrutiny standard to test the validity of the subject clause under the equal protection guarantee. I invoke the same legal reasoning as basis, *mutatis mutandis*, of my stance in the present case.

> A suspect classification is one where distinctions are made based on the most invidious bases for classification that violate the most basic human rights, *i.e*., on the basis of race, national origin, alien status, religious affiliation, and to a certain extent, sex and sexual orientation. With a suspect classification, the scrutiny of the classification is raised to its highest level: the ordinary presumption of constitutionality is reversed and government carries the burden of proving that its challenged policy is constitutional. To withstand strict scrutiny, the government must show that its policy is necessary to achieve a compelling state interest; if this is proven, the state must then demonstrate that the legislation is narrowly tailored to achieve the intended result.
>
> In the present case, *I do not see the slightest indication that Congress actually intended to classify OFWs* – between and among themselves, and in relation with local workers – when it adopted the disputed portion of Section 10. *The congressional intent was to merely grant recruitment and manning agencies an incentive and thereby encourage them into greater deployment efforts,* although, as discussed above, the incentive really works for the foreign principals' benefit at the expense of the OFWs.
>
> Even assuming that a classification resulted from the law, the classification should not immediately be characterized as a suspect classification that would invite the application of the strict scrutiny standard. ***The disputed portion of Section 10 does not, on its face, restrict or curtail the civil and human rights of any single group of OFWs. At best, the disputed portion limits the monetary award for wrongful termination of employment – a tort situation affecting an OFW's economic interest****. This characterization and the unintended classification that unwittingly results from the incentive scheme under Section 10, to my mind, render a strict scrutiny disproportionate to the circumstances* to which it is applied.

I believe, too, that ***we should tread lightly in further expanding the concept of suspect classification after we have done so in Central Bank, where we held that classifications that result in prejudice to persons accorded special protection by the Constitution*** requires a stricter judicial scrutiny. The use of a suspect classification label cannot depend solely on whether the Constitution has accorded special protection to a specified sector. While the Constitution specially mentions labor as a sector that needs special protection, the involvement of or relationship to labor, by itself, cannot automatically trigger a suspect classification and the accompanying strict scrutiny; *much should depend on the circumstances of the case, on the impact of the illegal differential treatment on the sector involved, on the needed protection, and on the impact of recognizing a suspect classification on future situations*. In other words, we should carefully calibrate our moves when faced with an equal protection situation so that we do not *misappreciate* the essence of what a suspect classification is, and thereby lessen its jurisprudential impact and value. Reserving this approach to the worst cases of unacceptable classification and discrimination highlights the importance of striking at these types of unequal treatment and is a lesson that will not be lost on all concerned, particularly the larger public. There is the added reason, too, that the reverse onus that a strict scrutiny brings directly strikes, in the most glaring manner, at the regularity of the performance of functions of a co-equal branch of government; inter-government harmony and courtesy demand that we reserve this type of treatment to the worst violations of the Constitution.

Incidentally, ***I believe that we can arrive at the same conclusion and similarly strike down the disputed Section 10 by using the lowest level of scrutiny, thereby rendering the use of the strict scrutiny unnecessary***. Given the OSG's positions, the resulting differential treatment the law fosters between Philippine-based workers and OFWs in illegal dismissal situations does not rest on substantial distinctions that are germane to the purpose of the law. No reasonable basis for classification exists since the distinctions the OSG pointed out do not justify the different treatment of OFWs and Philippine-based workers, specifically, why one class should be excepted from the consequences of illegal termination under the Labor Code, while the other is not.

To be sure, the difference in work locations and working conditions that the OSG pointed out are not valid grounds for distinctions that should matter in the enforcement of employment contracts. Whether in the Philippines or elsewhere, the integrity of contracts – be they labor, commercial or political – is a zealously guarded value that we in the Philippines should not demean by allowing a breach of OFW contracts easy to undertake. This is true whatever may be the duration or character of employment; employment contracts, whatever their term and conditions may be subject only to their consistency with the law, must be respected during the whole contracted term and under the conditions agreed upon.

> Significantly, the OSG could not even point to any reason other than the protection of recruitment agencies and the expansion of the Philippine overseas program as justification for the limitation of liability that has effectively distinguished OFWs from locally-based workers. These reasons, unfortunately, are not on the same plane as protection to labor in our constitutional hierarchy of values. Even RA 8042 repeats that "*the State does not promote overseas employment as a means to sustain economic growth and national development.*" Under RA 8042's own terms, *the overseas employment program exists only for OFW protection. Thus viewed, the expansion of the Philippine overseas deployment program and the need for incentives to achieve results are simply not valid reasons to justify a classification*, particularly when the incentive is in the form of oppressive and confiscatory limitation of liability detrimental to labor. No valid basis for classification thus exists to justify the differential treatment that resulted from the disputed Section 10.[5]

In this regard, I likewise reiterate my reasons and explanation for striking down the subject clause on the ground that **it violates the constitutional provisions in favor of labor and the substantive aspect of the due process clause.**

For proper perspective, I quote below the pertinent constitutional provision that secures a special status and treatment in favor of labor.

Article XIII

x x x x

> Section 18. 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.

This constitutional protection afforded to labor articulates in clearer and more concrete terms the constitutional policy under Section 18, Article II that declares and affirms *labor as a primary social economic force aimed at protecting the rights of workers and promoting their welfare.*

On the other hand, R.A. No. 8042 provides, among others:

> (b) 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. Towards this end, the State shall provide adequate and timely social, economic and legal services to Filipino migrant workers.
>
> x x x x
>
> (e) Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty. In this regard, it is imperative that an effective mechanism be instituted to ensure that the rights and interests of distressed overseas Filipinos, in general, and Filipino migrant workers, in particular, documented or undocumented, are adequately protected and safeguarded.

Under these terms, R.A. No. 8042 is discernibly a piece of social legislation that the State enacted in the exercise of its police power, precisely to give teeth and arms to the constitutional provisions on labor under its aim to "***establish a higher standard of protection and promotion of the welfare of migrant worker, their families and of overseas Filipinos in distress.***"[6] Otherwise stated, it draws power and life from the constitutional provisions that it seeks to concretize and implement.

As I pointed out in my *Serrano Opinion, "the express policy declarations of R.A. No. 8042 show that its purposes are reiterations of the very same policies enshrined in the Constitution x x x [They] patently characterize R.A. No. 8042 as a direct implementation of the constitutional objectives on Filipino overseas work so that it must be read and understood in terms of these policy objectives. Under this interpretative guide, any provision in R.A. No. 8042 inimical to the interest of an overseas Filipino worker (OFW) cannot have any place in the law."*[7] [Underscoring supplied]

Note also (again, as I reflected in my *Serrano Opinion*) that while R.A. No. 8042 acknowledges that the State shall *"promote full employment,"* it likewise provides that "*the State does not promote overseas employment as a means to sustain economic growth and national development. The existence of overseas employment program rests solely on the assurance that the dignity and fundamental human rights and freedom of Filipino citizens shall not, at any time, be compromised and violated."*[8] The Act, however, concludes its Declaration of Policies by stating that ***"[n]onetheless,***

the deployment of Filipino overseas workers, whether land-based or sea-based, by local service contractors and manning agencies employing them shall be encouraged. Appropriate incentives may be extended to them."[9] [Underscoring supplied]

Thus, the Act recognizes that to encourage greater deployment efforts, **"incentives" can be given, BUT, to service contractors and manning agencies ONLY**.[10] Contractors' and agencies' principals, i.e., the foreign employers in whose behalf the contractors and agencies recruit OFWs are not among those to whom incentives can be given as they are not mentioned at all in the Act.[11]

Of particular importance to the present case is Section 10 of R.A. No. 8042 which governs the OFWs' money claims.[12] Pursuant to its terms, the Act obviously protects the OFW as against the employer and the recruitment agency in cases of unlawful termination of service. Unfortunately, it limits the liability to the "*reimbursement of the placement fee and interest, and the payment of 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.*"[13]

This limitation is a step backward as it imposes a cap on the liability of the foreign principal/employer and the contractor/recruitment agency even as it earlier declared their liability joint and solidary.[14] To be an "appropriate incentive," this limitation of liability can only be justified under the terms of the law, *i.e.*, "**the incentive must necessarily relate to the law's purpose with reasonable expectation that it would serve this purpose; it must also accrue to its intended beneficiaries (the recruitment/placement agencies), and not to parties to whom the reason for the grant does not apply.**"[15]

Viewed in this light, the subject clause can only pass constitutional muster if it shows: (1) a lawful purpose; and (2) lawful means to achieve the lawful purpose.

On the *lawful purpose requirement,* the policy of extending incentives to local service contractors and manning agencies to encourage greater efforts at securing work for OFWs is, undeniably, constitutionally valid. **There is nothing inherently unconstitutional in providing such incentives for not only are local service contractors and manning agencies significant stakeholders in the government's overseas employment program;[16] the Constitution itself also expressly recognizes "*the right of labor to its just share in the fruits of production and the right to reasonable returns on investments, and expansion and growth*."**[17] [Underscoring supplied]

On the *lawful means requirement, i.e.*, whether the means employed to achieve the purpose of encouraging recruitment efforts (through the incentive granted of limiting the liability of recruitment/manning agencies for illegal dismissals) is reasonable, the subject clause obviously fails.

First, as I pointed out in my *Serrano Opinion,* Section 10 of R.A. No. 8042 provides measures that collectively protect OFWs, *i.e.,* by ensuring the integrity of their

contracts; by establishing the responsible parties; and by providing the mechanisms for their enforcement that imposes direct and primary liability to the foreign principal employer.[18] Yet, Section 10 presents a hidden twist affecting the principal/employer's liability. As worded, the Act "*simply limits the OFWs' recovery in wrongful dismissal situations. Thus, it redounds to the benefit of whoever may be liable, including the principal/employer – the direct employer primarily liable for the wrongful dismissal.*"[19]

From this perspective, Section 10 actually limits what is otherwise the foreign principal/employer's full liability under the Act and exceeds what the Act intended – to grant incentives to recruitment/manning agencies.[20] "***Section 10, in short, really operates to benefit the wrong party and allows that party, without justifiable reason, to mitigate its liability for wrongful dismissals***."[21] [Emphasis supplied] "Because of this hidden twist, the limitation of liability under **Section 10 cannot be an "appropriate" incentive."**[22] [Underscoring supplied]

Second, the chosen mode of granting the incentive, *i.e.*, **the liability limitation for wrongful dismissals of already deployed OFWs, effectively imposed, with legal sanction, a partial condonation of the foreign principal/employer's liability to OFWs**.[23] The incentive, therefore, "from a more practical and realistic view, is really part of a scheme to sell Filipino overseas labor *at a bargain* for purposes solely of attracting the market,"[24] a scheme that sadly reduces our OFWs to mere cash cows.

And *third*, **the "incentive scheme" effectively benefits the recruitment/manning agencies and foreign principal/employer at the expense of the OFWs from whom the salaries for the unexpired portion of the contract are taken and to whom these salaries rightfully belong.**[25] In effect, "the principals/employers and the recruitment/manning agencies profit from their violation of the security of tenure that an employment contract embodies."[26] The OFWs, on the other hand, are afforded lesser protection because: (1) they are afforded reduced recovery by operation of law; (2) the reduced recovery renders wrongful dismissal situations more alluring, easier to facilitate and less onerous to undertake which foreign employers will most certainly consider in termination of employment decisions.[27]

These inimical effects obviously will remain as long as the subject clause remains in Section 10 of R.A. No. 8042, this time as reinstated by R.A. No. 10022. The "inherently oppressive, arbitrary, confiscatory and inimical provision [under Section 10 of R.A. No. 8042 should, therefore,] be struck down for its conflict with the substantive aspect of the constitutional due process guarantee.[28] Thus, I vote to declare as unconstitutional ***the phrase* "for three (3) months for every year of the unexpired terms, whichever is less" *in the fifth and final paragraph of Section 10 of R.A. 8042."***

In sum, given these considerations and conclusions, further testing the validity of the assailed clause under the equal protection guarantee, particularly under the strict scrutiny standard that the *ponencia* in the present case deemed appropriate to employ, is clearly unnecessary.

[1] Enacted on June 7, 1995.

[2] Enacted on July 8, 2010.

[3] G.R. No. 167614, 601 Phil. 245 (2009).

[4] Id. at 312-324.

[5] Id. at 322-324; italics and emphasis supplied, citations omitted.

[6] The long title of R.A. No. 8042.

[7] *Supra* note 2, at 313-314.

[8] Id. at 314.

[9] Id.

[10] Supra note 2, at 314.

[11] Id.

[12] Section 10 of R.A. No. 8042 pertinently reads:

> SECTION 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 any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages.
>
> The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.

> Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract.
>
> Any compromise/amicable settlement or voluntary agreement on money claims inclusive of damages under this section shall be paid within four (4) months from the approval of the settlement by the appropriate authority.
>
> In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to the full reimbursement of his placement fee with interest at 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.

[13] Supra note 2, at 316.

[14] Id.

[15] Id.

[16] Supra note 2, at 317.

[17] Id.

[18] Supra note 2, at 319.

[19] Id. at 320.

[20] Id. at 320.

[21] Id. at 320.

[22] Id.

[23] *Supra* note 2, at 320.

[24] Id.

[25] Id. at 320.

[26] Id. at 320-321.

[27] Id. at 321.

[28] Id.
