**THIRD DIVISION**

**G.R. No. 224521 – Bishop Shinji Amari of Abiko Baptist Church, represented by Shinji Amari, and Missionary Baptist Institute and Seminary, represented by Director Joel P. Nepomuceno, *Petitioners*, v. Ricardo Villaflor, Jr., *Respondent*.**

**Promulgated:**
February 17, 2020

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## SEPARATE CONCURRING OPINION

**ZALAMEDA, *J.*:**

> *[W]henever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.*[1]

I agree with the *ponencia* which reinstated the ruling of the National Labor Relations Commission and declared that "being an instructor of [Missionary Baptist Institute and Seminary (MBIS)] was part of [Ricardo Villaflor, Jr.'s (Villaflor)] mission work as a missionary/minister of [Abiko Baptist Church (ABC)]." Villaflor's "removal as a missionary of [ABC] is different from his status as an instructor of MBIS." Villaflor failed to prove that he was an employee of ABC and MBIS; hence, there can be no finding of illegal dismissal. The clash between ABC's right to exercise its religious freedom in the choice of its members and Villaflor's property rights to income and abode was more apparent than real.

To be sure, the *ponencia* recognizes the distinction between ecclesiastical and secular matters, and the corresponding exercise of jurisdiction of the civil courts. This underscores the Philippine Constitution's commitment to the separation of Church and State, as well as the preferential treatment it gives to the right to exercise one's religion.

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[1] *Watson v. Jones*, 80 U.S. 679, 722 (1871).

The provision on religion in Section 5, Article III of the 1987 Constitution is substantially the same as in the 1935[2] and 1973[3] Constitutions: "No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights." The 1934 Constitutional Convention accepted the basic provision without debate,[4] and paved the way for the adoption of interpretations of this provision from the United States (US), its country of origin.

In *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*[5] (*Hossana-Tabor*), the US Supreme Court provided the historical backdrop for the adoption of the First Amendment's Non-Establishment and Free Exercise clauses.[6] *Hossana-Tabor* traced the beginnings of the Non-Establishment clause from the first clause of the Magna Carta.[7] In 1215, King John of England agreed with the Archbishop of Canterbury's proposal that the English Church shall be free, there will be no diminution of the English Church's rights nor impairment of its liberties, and there shall be freedom in the elections in the English Church. This freedom, however, existed only in theory. For example, through the First Act of Supremacy in 1534,[8] King Henry VIII declared himself "the only supreme head in earth of

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2 Section 1(7), Article III.

3 Section 8, Article IV.

4 Joaquin G. Bernas, SJ, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 318 (2003).

5 565 U.S. 171 (2012).

6 The First Amendment reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

7 The First Clause of the Magna Carta reads: "First, that we have granted to God, and by this present charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired. That we wish this so to be observed, appears from the fact that of our own free will, before the outbreak of the present dispute between us and our barons, we granted and confirmed by charter the freedom of the Church's elections - a right reckoned to be of the greatest necessity and importance to it - and caused this to be confirmed by Pope Innocent III. This freedom we shall observe ourselves, and desire to be observed in good faith by our heirs in perpetuity."

8 The First Act of Supremacy reads: "Albeit the king's Majesty justly and rightfully is and ought to be the supreme head of the Church of England, and so is recognized by the clergy of this realm in their convocations, yet nevertheless, for corroboration and confirmation thereof, and for increase of virtue in Christ's religion within this realm of England, and to repress and extirpate all errors, heresies, and other enormities and abuses heretofore used in the same, be it enacted, by authority of this present Parliament, that the king, our sovereign lord, his heirs and successors, kings of this realm, shall be taken, accepted, and reputed the only supreme head in earth of the Church of England, called *Anglicana Ecclesia*; and shall have and enjoy, annexed and united to the imperial crown of this realm, as well the title and style thereof, as all honors, dignities, preeminences, jurisdictions, privileges, authorities, immunities, profits, and commodities to the said dignity of the supreme head of the same Church belonging and appertaining; and that our said sovereign lord, his heirs and successors, kings of this realm, shall have full power and authority from time to time to visit, repress, redress, record, order, correct, restrain, and amend all such errors, heresies, abuses, offenses, contempts and enormities, whatsoever they be, which by any manner of spiritual authority or jurisdiction ought or may lawfully be

the Church of England." Thus, the founding generation of the US institutionalized its desire to remove the government from church matters in their Constitution:

> By forbidding the "establishment of religion" and guaranteeing the "free exercise thereof," the Religion Clauses ensured that the new Federal Government—unlike the English Crown—would have no role in filling ecclesiastical offices. The Establishment Clause prevents the Government from appointing ministers, and the Free Exercise Clause prevents it from interfering with the freedom of religious groups to select their own.[9]

This exclusion of government participation in church matters was subsequently challenged in court. The deference test was initially articulated by the US Supreme Court in *Watson v. Jones*.[10] The property dispute in *Watson* arose from a difference in the positions of the church authorities about slavery. The General Assembly of the Presbyterian Church was against slavery. Watson, on the other hand, was a member of the Walnut Street Church Session, which was the governing body of the Walnut Street Presbyterian Church, and was for slavery. Majority of the members of the Walnut Street Presbyterian Church took the view of the General Assembly. The General Assembly removed Watson as an elder of the church and filed a case against Watson and his followers to prevent them from possessing church property.

The US Supreme Court formulated the deference test to resolve the dispute in *Watson*. The Court deferred to the decision of the General Assembly when it removed Watson as an elder. The General Assembly, as the highest deciding body in the church's structure, had the authority, procedure, and organization to resolve the church's internal disputes. *Watson* further underscored the lack of jurisdiction of civil courts over ecclesiastical matters:

> But it is a very different thing where a subject matter of dispute, strictly and purely ecclesiastical in its character – a matter over which the civil courts exercise no jurisdiction – a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them – becomes the subject of its action. It may be said here also that no jurisdiction has been conferred on the tribunal to try the

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reformed, repressed, ordered, redressed, corrected, restrained, or amended, most to the pleasure of Almighty God, the increase of virtue in Christ's religion, and for the conservation of the peace, unity, and tranquility of this realm; any usage, foreign land, foreign authority, prescription, or any other thing or things to the contrary hereof notwithstanding."

9 *Hossana-Tabor* collectively refers to the Non-Establishment and Free Exercise clauses as the Religion Clauses.

10 *Supra* at note 1.

> particular case before it, or that, in its judgment, it exceeds the powers conferred upon it, or that the laws of the church do not authorize the particular form of proceeding adopted, and, in a sense often used in the courts, all of those may be said to be questions of jurisdiction. But it is easy to see that if the civil courts are to inquire into all these matters, the whole subject of the doctrinal theology, the usages and customs, the written laws, and fundamental organization of every religious denomination may and must be examined into with minuteness and care, for they would become in almost every case the criteria by which the validity of the ecclesiastical decree would be determined in the civil court. This principle would deprive these bodies of the right of construing their own church laws, would open the way to all the evils which we have depicted as attendant upon the doctrine of Lord Eldon, and would, in effect, transfer to the civil courts where property rights were concerned the decision of all ecclesiastical questions.[11]

*Serbian Orthodox Diocese v. Milivojevich*,[12] another case decided by the US Supreme Court, quoted *Watson's* formulation of the deference test when it ruled in favor of the Holy Assembly of Bishops and the Holy Synod of the Serbian Orthodox Church (Mother Church). The Mother Church suspended and subsequently removed Milivojevich as Bishop of its American-Canadian Diocese. Milivojevich sought relief from the Illinois Circuit Court to prevent the Mother Church from interfering with the assets of his diocese, and to declare himself as the diocese's true Bishop. The Illinois Supreme Court ruled in favor of Milivojevich because it found that the proceedings for Milivojevich's removal were procedurally and substantively defective under the Mother Church's own internal regulations. The US Supreme Court reversed the Illinois Supreme Court and declared that the Illinois Supreme Court made inquiries into matters of ecclesiastical cognizance and polity. Thus, the Illinois Supreme Court's actions pursuant to its inquiry ran contrary to the US Constitution's First[13] and Fourteenth[14]

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[11] *Id.*

[12] 426 U.S. 696 (1976).

[13] *Supra* at note 1.

[14] The Fourteenth Amendment is composed of five sections, which read as follows:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or

Amendments. The US Supreme Court concluded:

> In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them.[15]

Aside from the deference test, the US Supreme Court also articulated the ministerial exception. *Hossana-Tabor* explained that the ministerial exception removes religious organizations from the application of employment discrimination laws. Like the deference test, the ministerial exception is also anchored on the First Amendment:

> The members of a religious group put their faith in the hands of their ministers. Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs. By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments. According the state the power to determine which individuals will minister to the faithful also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions.
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> The purpose of the exception is not to safeguard a church's decision to fire a minister only when it is made for a religious reason. The exception instead ensures that the authority to select and control who will minister to the faithful—a matter "strictly ecclesiastical,"— is the church's alone.
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as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to The enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

[15] 426 US 696, 724-725 (1976).

> The interest of society in the enforcement of employment discrimination statutes is undoubtedly important. But so too is the interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission. When a minister who has been fired sues her church alleging that her termination was discriminatory, the First Amendment has struck the balance for us. The church must be free to choose those who will guide it on its way.

In *Hossana-Tabor*, the US Supreme Court considered the circumstances of Perich's employment and found her to be a minister as defined by the Evangelical Lutheran Church. In its application of the ministerial exception to Perich, the Court considered the formal title accorded to Perich by the Church (Minister of Religion, Commissioned), the substance reflected in the formal title (Perich had to complete extensive religious training, apply for endorsement from her local Synod, pass an oral examination, and be elected by the congregation to become a minister), Perich's use of the title (these included Perich's acceptance of the formal call to religious service, claim to special housing allowance on her taxes, and reference to herself as a minister), and Perich's religious functions for the Church (Perich was a teacher of religion and conducted religion-related activities outside of her teaching hours). The Court dismissed the employment discrimination suit filed by Perich against Hossana-Tabor Evangelical Lutheran Church and School.

Needless to say, this Court has also found the occasion to rule on the apparent clashes between the exercise of religious freedom and the property rights to income.

In *Austria v. National Labor Relations Commission*[16] *(Austria),* this Court reached a conclusion which is different from that of the *ponencia*. The difference in conclusion, however, lies in the allegations put forward by the church to justify the removal of its employee-minister. In *Austria*, the employee-minister received a letter terminating his services on the grounds of misappropriation of denominational funds, willful breach of trust, serious misconduct, gross and habitual neglect of duties, and commission of an offense against the person of employer's (the church) duly authorized representative. This Court found that the church removed the minister as its employee and not as its church official or even its church member. Moreover, the church belatedly questioned the jurisdiction of the administrative bodies and actively participated in the hearings. *Austria's* distinction between secular and ecclesiastical affairs provides an enlightening discussion:

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[16] G.R. No. 124382, 371 Phil. 340 (1999).

The rationale of the principle of the separation of church and state is summed up in the familiar saying, "Strong fences make good neighbors." The idea advocated by this principle is to delineate the boundaries between the two institutions and thus avoid encroachments by one against the other because of a misunderstanding of the limits of their respective exclusive jurisdictions. The demarcation line calls on the entities to "render therefore unto Ceasar [sic] the things that are Ceasar's [sic] and unto God the things that are God's." The Church is likewise barred from meddling in purely secular matters.

The case at bar does not concern an ecclesiastical or purely religious affair as to bar the State from taking cognizance of the same. An ecclesiastical affair is "one that concerns doctrine, creed or form or worship of the church, or the adoption and enforcement within a religious association of needful laws and regulations for the government of the membership, and the power of excluding from such associations those deemed unworthy of membership." Based on this definition, an ecclesiastical affair involves the relationship between the church and its members and relate to matters of faith, religious doctrines, worship and governance of the congregation. To be concrete, examples of this so-called ecclesiastical affairs to which the State cannot meddle are proceedings for excommunication, ordinations of religious ministers, administration of sacraments and other activities which attached religious significance. The case at bar does not even remotely concern any of the abovecited examples. While the matter at hand relates to the church and its religious minister it does not *ipso facto* give the case a religious significance. Simply stated, what is involved here is the relationship of the church as an employer and the minister as an employee. It is purely secular and has no relation whatsoever with the practice of faith, worship or doctrines of the church. In this case, petitioner was not excommunicated or expelled from the membership of the SDA but was terminated from employment. Indeed, the matter of terminating an employee, which is purely secular in nature, is different from the ecclesiastical act of expelling a member from the religious congregation.

As pointed out by the OSG in its memorandum, the grounds invoked for petitioner's dismissal, namely: misappropriation of denominational funds, willful breach of trust, serious misconduct, gross and habitual neglect of duties and commission of an offense against the person of his employer's duly authorized representative, are all based on Article 282 of the Labor Code which enumerates the just causes for termination of employment. By this alone, it is palpable that the reason for petitioner's dismissal from the service is not religious in nature. Coupled with this is the act of the SDA in furnishing NLRC with a copy of petitioner's letter of termination. As aptly stated by the OSG, this again is an eloquent admission by private respondents that NLRC has jurisdiction over the case. Aside from these, SDA admitted in a certification issued by its officer, Mr. Ibesate, that petitioner has been its employee for twenty-eight (28) years. SDA even registered petitioner with the Social Security System (SSS) as its employee. As a matter of fact, the worker's records of petitioner have been submitted by private respondents as part of their exhibits. From all of these it is clear that when the SDA terminated the

> services of petitioner, it was merely exercising its management prerogative to fire an employee which it believes to be unfit for the job. As such, the State, through the Labor Arbiter and the NLRC, has the right to take cognizance of the case and to determine whether the SDA, as employer, rightfully exercised its management prerogative to dismiss an employee. This is in consonance with the mandate of the Constitution to afford full protection to labor.[17]

*Long v. Basa*,[18] on the other hand, involved church members who questioned their expulsion from the church before the Securities and Exchange Commission. Their expulsion was predicated on acts that "espous[e] doctrines inimical or injurious to the faith of the church."[19] The church members sought the annulment of the membership list that excluded their names on the ground of lack of prior notice and hearing. In upholding the church members' expulsion, this Court made a distinction between a religious corporation and a corporation that is organized for profit, as well as underscored the importance of adherence to a common religious belief as a qualification for church membership. We declared:

> The CHURCH By-law provision on expulsion, as phrased, may sound unusual and objectionable to petitioners as there is no requirement of prior notice to be given to an erring member before he can be expelled. But that is how peculiar the nature of a religious corporation is *vis-à-vis* an ordinary corporation organized for profit. It must be stressed that the basis of the relationship between a religious corporation and its members is the latter's absolute adherence to a common religious or spiritual belief. Once this basis ceases, membership in the religious corporation must also cease. Thus, generally, there is no room for dissension in a religious corporation. And where, as here, any member of a religious corporation is expelled from the membership for espousing doctrines and teachings contrary to that of his church, the established doctrine in this jurisdiction is that such action from the church authorities is conclusive upon the civil courts. As far back in 1918, we held in *United States vs. Canete* that:
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> > ". . . in matters purely ecclesiastical the decisions of the proper church tribunals are conclusive upon the civil tribunals. A church member who is expelled from the membership by the church authorities, or a priest or minister who is by them deprived of his sacred office, is *without remedy in the civil courts, which will not inquire into the correctness of the decisions of the ecclesiastical tribunals.*" (Emphasis ours)
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> Obviously recognizing the peculiarity of a religious corporation, the Corporation Code leaves the matter of ecclesiastical discipline to the religious group concerned.

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[17] *Id.* at 352-354; citations omitted.
[18] G.R. Nos. 134963-64, 135152-53 & 137135, 418 Phil. 375 (2001).
[19] *Id.* at 389.

Section 91 of the Corporation Code, which has been made explicitly applicable to religious corporations by the second paragraph of Section 109 of the same Code, states:

> "SECTION 91. *Termination of membership.* — Membership shall be terminated *in the manner and for the causes provided in the articles of incorporation or the by-laws*. Termination of membership shall have the effect of extinguishing all rights of a member in the corporation or in its property, unless otherwise provided in the articles of incorporation or the by-laws." (Emphasis ours)

Moreover, the petitioners really have no reason to bewail the lack of prior notice in the By-laws. As correctly observed by the Court of Appeals, they have waived such notice by adhering to those By-laws. They became members of the CHURCH *voluntarily*. They entered into its covenant and subscribed to its rules. By doing so, they are bound by their consent.[20]

Indeed, upon showing of sufficient proof, the Court will not hesitate to uphold the exercise of religious freedom over property rights to income and even to abode, once the church hierarchy has made its decision involving ecclesiastical matters. Accordingly, an intrusion into the church's religious freedom in disciplining and in expelling its missionaries cannot be countenanced, as in this case. Hence, I concur with the *ponencia* and vote to **GRANT** the Petition.

**RODIL V. ZALAMEDA**
Associate Justice

**CERTIFIED TRUE COPY**

**MISAEL DOMINGO C. BATTUNG III**
**Division Clerk of Court**
Third Division

JUL 15 2020

[20] *Id.* at 396-398; citations omitted.