



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

**DEL MONTE LAND TRANSPORT
 BUS COMPANY and NARCISO O.
 MORALES,**

Petitioners,

- versus -

CARLITO T. ABERGOS,
 Respondent.

G.R. No. 245344

Present:

PERALTA, *C.J.*, Chairperson,
 CAGUIOA,
 CARANDANG,
 ZALAMEDA, and
 GAERLAN, *JJ.*

Promulgated:

DEC 02 2020 *with initials*

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DECISION

CAGUIOA, J.:

Before the Court is a Petition for Review on *Certiorari*¹ (Petition) under Rule 45 of the Rules of Court assailing the Decision² dated June 18, 2018 and Resolution³ dated February 13, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 151770. The CA reversed the National Labor Relations Commission (NLRC) and ruled that respondent Carlito Abergos (Abergos) is entitled to reinstatement, instead of the NLRC's award of separation pay, in addition to backwages and attorney's fees.

Facts

The CA summarized the facts, as follows:

The instant controversy stemmed from a complaint for constructive dismissal and payment of damages and attorney's fees filed on October 18, 2016 before the Labor Arbiter by Carlito Torres Abergos (Abergos) against Del Monte Land Transport Bus Company (DLTB Co.) and Narciso Morales (Morales).

¹ *Rollo*, pp. 12-82, excluding the Annexes.

² *Id.* at 83-94. Penned by Presiding Justice Romeo F. Barza and concurred in by Associate Justices Stephen C. Cruz and Carmelita Salandanan Manahan.

³ *Id.* at 95-96.

Abergos claimed that he was hired by DLTB Co. as a bus driver on September 12, 2011 with a daily average income of One Thousand Eight Hundred Pesos (PhP1,800.00). Sometime on August 28, 2016, at around 11:00 p.m., he drove the DLTB Co. bus and arrived at Matnog Port, Sorsogon, en route to Southern Leyte. The bus was arranged to be ferried by a FastCat Ferry at 3:00 a.m.[.] but DLTB Co.'s facilitator or fixer gathered all the passengers so they can ride the 9:00 a.m. trip instead. The passengers got angry and confused and asked him why they were taking the later trip when they could already board the 3:00 a.m. trip. Because of the confusion, they were forced to take the 3:00 a.m. trip of Star Ferry.

Abergos alleged that on August 31, 2016, after he got back from the trip, he was summoned to Mr. Sabino's office to explain why the passengers were not able to immediately board the Star Ferry. After he submitted his written explanation, he was handed a memorandum suspending him for fifteen (15) days effective from September 1 to 15, 2016. When he reported back for work on September 16, 2016, he was told by Mr. Sabino that he was already dismissed from his employment. Hence, the instant complaint praying that he be declared as illegally dismissed from work and that [DLTB] Co. and Morales (collectively, [petitioners]) be ordered to reinstate him to his former position with payment of full backwages and other benefits, moral and exemplary damages, and attorney's fees.

[Petitioners] failed to file their position paper to contradict the above allegations.

Thus, on October 19, 2016, the Labor Arbiter rendered judgment in favor of Abergos as follows:

*WHEREFORE, premises considered, judgment is hereby rendered declaring the dismissal of complainant **CARLITO T. ABERGOS** illegal. [Petitioners'] **DEL MONTE LAND TRANSPORT BUS CO. and NARCISO MORALES** are held jointly and severally liable to pay complainant his backwages, separation pay, and ten (10%) percent by way of attorney's fees tentatively computed in the amount of P110,052.80 (P100,048.00 + P10,004.80).*

*Other claims are **DISMISSED** for lack of merit.*

SO ORDERED.

Abergos filed a partial appeal before the NLRC only insofar as the Labor Arbiter's finding of strained relations and order for payment of separation pay, in lieu of reinstatement, were concerned.

The NLRC, in a decision dated February 28, 2017, modified the Labor Arbiter's ruling after determining that there was no evidence or allegation of strained relations between the parties. It disposed of the case in this wise:

*WHEREFORE, premises considered, complainant's partial appeal is granted. The Decision dated January 3, 2017 is hereby **MODIFIED** by **DELETING** the award of separation pay in the amount of P62,530.00 and **ORDERING** [petitioner] **DEL MONTE LAND***



TRANSPORT BUS CO. to reinstate complainant CARLITO T. ABERGOS to his former position without loss of seniority rights and other privileges.

The rest of the Decision is AFFIRMED.

SO ORDERED.

[Petitioners] sought a reconsideration of the above decision. They contended that Abergos was assigned to operate and manage a passenger bus that transported passengers from Batangas. As a common carrier, [DLTB] Co. encouraged its employees to at all times exhibit the highest degree of discipline in the performance of their duties. Notwithstanding his awareness of the [DLTB] Co. Code of Conduct, his performance and work attitude left much to be desired on account of the numerous infractions he committed during his assignment at [DLTB] Co.'s Eastern Visayas-Tacloban Operation Center:

1. Per Inspector Neil Gomez's report, Abergos violated company rules when he deliberately failed to stop for inspection barely a month from his hiring. He was given a warning and a reminder that a similar behavior [would] be dealt with more severely;
2. June 12, 2012 – not assisting passenger;
3. January 21, 2013 – passenger complaint for being arrogant;
4. On September 25, 2013, he was driving recklessly when he overtook a trail truck and two (2) buses while on a curved part of the road. When he was asked to explain, he casually argued that the truck ahead of him was too slow while the buses were directly behind the truck. He was admonished, reminded to improve his work attitude, and sternly warned that a more severe disciplinary measure would be imposed upon repetition of a similar offense;
5. October 13, 2013 – not stopping for inspection;
6. The Human Resource (HR) Manager raised to Area Manager Burton Go-Soco (Soco) a more serious incident involving a complaint for attempted homicide and arrogance filed by spouses Castro against Abergos and a co-driver, Renato Alperez, at the LTFRB-Legaspi City. While the complaint was dismissed, it resulted to an investigation since it constituted an act of impropriety which tarnished the company's image;
7. On February 7, 2014, Soco personally witnessed Abergos' arrogant behavior when the latter threw the tickets on the table and began to shout at Inspector Tierra who was only conducting a ticket inspection in his assigned bus;
8. On October 9, 2014, another passenger complained Abergos for being arrogant. A passenger, who had a ticket from Cubao to Tacloban only, was asking for a discount from Tacloban to Ormoc because he ran out of cash. Abergos denied the passenger's request in a loud voice;



9. On February 7, 2015, he was suspended from March 12 to 16, 2015 for displaying arrogant behavior towards his superiors. He was directed to return to the company's HR Department for reassignment on March 17, 2015;

10. Various incident reports about his attitude towards his co-workers, superiors, and passengers were later reported; and

11. On August 27, 2016, in violation of the company's rule for passengers to board the ferry that arrived the earliest at the Matnog Port and despite the Star Ferry's earlier arrival, he insisted that the passengers be loaded in the FastCat Ferry. He was suspended from September 1 to 15, 2016.

[Petitioners] asserted that on September 16, 2016, Abergos was served an order reassigning him to [DLTB] Co.'s Batangas Operation Center in Nasugbu, Batangas. Instead of complying with the return to work order, Abergos refused to report for work. As a consequence, [DLTB] Co. sent him a notice to explain on September 27, 2016 directing him to submit within five (5) days from notice a written explanation for his unauthorized absences. To their surprise, [petitioners] found that Abergos filed a complaint for constructive illegal dismissal and payment of his monetary claims.

[Petitioners] argued that the NLRC erred in modifying the decision of the Labor Arbiter and deleting the award of separation pay. They maintained that the Labor Arbiter correctly awarded separation pay based on a finding that Abergos' reinstatement would not be in the best interest of the parties. They reasoned that his reckless disregard for the safety of the passengers and the company's property justified the award of separation pay in lieu of reinstatement.

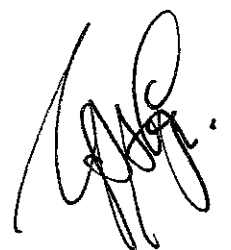
Taking into consideration the documentary evidence presented by [petitioners], the NLRC rendered the now assailed Resolution [dated May 24, 2017] reinstating the payment of separation pay in lieu of reinstatement. The dispositive portion of the resolution reads:

WHEREFORE, finding merit in the Motion for Reconsideration, We modify our Decision promulgated on February 28, 2017 and reinstate the Labor Arbiter's Decision granting separation pay at one (1) month pay per year of service, a fraction of six (6) months being considered as one (1) year plus backwages reckoned from his dismissal until finality of this decision in lieu of reinstatement plus 10% attorney's fees.

*SO ORDERED.*⁴

Without moving for reconsideration, Abergos filed a petition for *certiorari* under Rule 65 before the CA.

⁴ Id. at 84-88.



CA Decision

In the assailed Decision, the CA found that the NLRC committed grave abuse of discretion when it considered the belated evidence submitted by petitioners in ruling that strained relations existed.⁵

The CA found that petitioners did not cite an adequate reason for its failure to file a position paper before the Labor Arbiter (LA). Moreover, petitioners only presented evidence on the existence of strained relations when the NLRC modified the LA Decision by ordering reinstatement and again without any valid explanation. Petitioners could have easily submitted these pieces of evidence before the LA, but they failed to do so.⁶

It was therefore capricious and whimsical for the NLRC to admit and give weight to petitioners' belatedly submitted evidence when they opted not to even appeal the LA Decision. Further, the CA found that the evidence that petitioners belatedly submitted failed to demonstrate that the relationship between the parties has reached the point where it is best left severed. The CA found that Abergos has been penalized for all his infractions. In fact, Abergos has been penalized with a 15-day suspension for the infraction that gave rise to this case and transferred him to a different operations center.⁷ For the CA, since DLTB Co.'s own rules impose penalties other than termination of employment, it should not impose the same.⁸

The doctrine of strained relations, according to the CA, cannot be used recklessly or applied loosely to deprive an illegally dismissed employee of his means of livelihood and deny him reinstatement.⁹ It should not be given an overarching interpretation to include the resultant "strained relations" in most labor disputes because to do so would make reinstatement an impossibility.¹⁰

The dispositive portion of the CA Decision states:

WHEREFORE, the petition for certiorari is **GRANTED**. The assailed Resolution of the NLRC in NLRC LAC No. 02-000504-17 is **REVERSED** and **SET ASIDE**. Its Decision dated February 28, 2017 is **REINSTATED**.

SO ORDERED.¹¹

Petitioners filed a motion for reconsideration but this was denied.

Hence, this Petition.

⁵ Id. at 89.

⁶ Id. at 90.

⁷ Id. at 90-91.

⁸ See id. at 91.

⁹ Id.

¹⁰ See id. at 92.

¹¹ Id. at 93.



Abergos was directed to file his comment in a Resolution¹² dated July 3, 2019, but he failed to do so. The Court therefore deemed the filing of such comment as waived in a Resolution¹³ dated October 5, 2020.

Issues

Petitioners raised the following issues:

a. whether the CA erred in entertaining Abergos's petition for *certiorari* despite his failure to move for the reconsideration of the NLRC's Resolution dated May 24, 2017;

b. whether the CA erred in reversing the NLRC's award of separation pay in lieu of reinstatement; and

c. whether there exists a supervening event that rendered the CA's directive of reinstatement impossible.

The Court's Ruling

The Petition is meritorious.

A motion for reconsideration is required before filing a petition for certiorari.

The records show that Abergos failed to file a motion for reconsideration prior to filing the petition for *certiorari* assailing the NLRC's Resolution dated May 24, 2017. The 2011 NLRC Rules of Procedure, as amended (2011 NLRC Rules), allows the filing of a motion for reconsideration of the NLRC decision, as follows:

SECTION 15. *Motions for Reconsideration.* – Motion for reconsideration of any decision, resolution or order of the Commission shall not be entertained except when based on palpable or patent errors; provided that the motion is filed within ten (10) calendar days from receipt of decision, resolution or order, with proof of service that a copy of the same has been furnished, within the reglementary period, the adverse party; and provided further, that only one such motion from the same party shall be entertained.¹⁴

It is settled that a motion for reconsideration, when allowed to be filed, is an indispensable condition to the filing of a petition for *certiorari*. As the Court held in *Sim v. National Labor Relations Commission*:¹⁵

¹² Id. at 597.

¹³ Id. at 600.

¹⁴ 2011 NLRC RULES OF PROCEDURE, Rule VII.

¹⁵ G.R. No. 157376, October 2, 2007, 534 SCRA 515.



Under Rule 65, the remedy of filing a special civil action for *certiorari* is available only when there is no appeal; or any plain, speedy, and adequate remedy in the ordinary course of law. A “plain” and “adequate remedy” is a motion for reconsideration of the assailed order or resolution, the filing of which is an indispensable condition to the filing of a special civil action for *certiorari*. This is to give the lower court the opportunity to correct itself.¹⁶ (Citations omitted)

There are, however, exceptions to this rule, as follows:

- (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction;
- (b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
- (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;
- (d) where, under the circumstances, a motion for reconsideration would be useless;
- (e) where petitioner was deprived of due process and there is extreme urgency for relief;
- (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
- (g) where the proceedings in the lower court are a nullity for lack of due process;
- (h) where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and
- (i) where the issue raised is one purely of law or public interest is involved.¹⁷

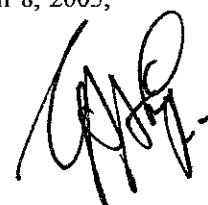
Here, Abergos failed to provide any reason in his petition for *certiorari*¹⁸ for his failure to file a motion for reconsideration. Curiously, despite being apparent in the CA’s narration of facts that Abergos did not file a motion for reconsideration before filing the petition for *certiorari*, the CA did not discuss how the failure to move for reconsideration affected the propriety of the petition for *certiorari*. The CA even proceeded to rule on the merits and nullify the NLRC’s Resolution. This is error.

In a similar case, the Court found that the CA correctly dismissed a petition for *certiorari* that was filed without the filing of a motion for

¹⁶ Id. at 521.

¹⁷ Id. at 521-522, citing *Abacan, Jr. v. Northwestern University, Inc.*, G.R. No. 140777, April 8, 2005, 455 SCRA 136, 149.

¹⁸ *Rollo*, pp. 280-293.



reconsideration before the trial court. The Court held in *Cervantes v. Court of Appeals*¹⁹ (*Cervantes*):

An examination of the records, specifically the petition for certiorari filed with the Court of Appeals, reveals that petitioner not only failed to explain his failure to file a motion for reconsideration of the August 27, 2004 Order of the trial court; he also failed to show sufficient justification for dispensing with the requirement. Neither did he show that the case falls under any of the above exceptions. It was only in the motion for reconsideration of the November 22, 2004 Resolution of the Court of Appeals and in the instant petition that he explained why he dispensed with the filing of prior motion for reconsideration.

It must be emphasized that a writ of certiorari is a prerogative writ, never demandable as a matter of right, never issued except in the exercise of judicial discretion. Hence, he who seeks a writ of certiorari must apply for it only in the manner and strictly in accordance with the provisions of the law and the Rules. Petitioner may not arrogate to himself the determination of whether a motion for reconsideration is necessary or not. To dispense with the requirement of filing a motion for reconsideration, petitioner must show a concrete, compelling, and valid reason for doing so, which petitioner failed to do. Thus, the Court of Appeals correctly dismissed the petition.²⁰ (Citations omitted)

Similarly, the CA should have dismissed the petition for *certiorari* outright. There is nothing on record to justify a relaxation of the rules. Just like in *Cervantes*, Abergos failed to provide any justification for not filing a motion for reconsideration or that his case falls under any of the exceptions. Abergos, who sought the extraordinary writ of *certiorari*, must apply for it in the manner and strictly in accordance with the provisions of the law and the Rules of Court. He failed to show any concrete, compelling and valid reason for dispensing with the motion for reconsideration.

Likewise, the CA disregarded a requirement without any explanation for such action. A relaxation of the rules may be done only in the most persuasive of reasons and strict compliance is always enjoined to facilitate the orderly administration of justice.²¹ In this regard, the CA committed an error.

Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are enjoined to abide strictly by the rules.²² Although a relaxation of the rules may be allowed, it was never intended that such relaxation benefit erring litigants who violate it with impunity, much less without any explanation.²³ And while litigation is not a game of technicalities, it is also true that each case must be prosecuted in accordance with the prescribed procedure, especially here where Abergos sought to avail

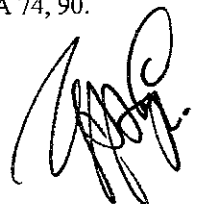
¹⁹ G.R. No. 166755, November 18, 2005, 475 SCRA 562.

²⁰ Id. at 570.

²¹ *Saint Louis University, Inc. v. Olarez*, G.R. Nos. 162299 & 174758, March 26, 2014, 720 SCRA 74, 90.

²² *Nuque v. Aquino*, G.R. No. 193058, July 8, 2015, 762 SCRA 209, 219-220.

²³ See id. at 220.



of an extraordinary remedy of *certiorari*. His failure to comply with the requirements to avail of such remedy is fatal to his petition.²⁴

In the context of labor cases, the strict compliance with the requirements of a petition for *certiorari* bears more significance. Following the 2011 NLRC Rules, the NLRC's decisions attain finality 10 days from its receipt by the counsel or the parties or their representatives. Rule VII of the 2011 NLRC Rules states:

SECTION 14. *Finality of Decision of the Commission and Entry of Judgment.* – a) Finality of the Decisions, Resolutions or Orders of the Commission. – Except as provided in Section 9 of Rule X, the decisions, resolutions or orders of the Commission shall become final and executory after ten (10) calendar days from receipt thereof by the counsel or authorized representative or the parties if not assisted by counsel or representative.

b) Entry of Judgment. – Upon the expiration of the ten (10) calendar day period provided in paragraph (a) of this Section, the decision, resolution, or order shall be entered in a book of entries of judgment.

In the absence of return cards, certifications from the post office or the courier authorized by the Commission or other proofs of service to the parties, the Executive Clerk or Deputy Executive Clerk shall consider the decision, resolution or order as final and executory after sixty (60) calendar days from date of mailing. (14a) (As amended by NLRC En Banc Resolution No. 005-14, Series of 2014)

In fact, Rule XI of the 2011 NLRC Rules states that the NLRC's decisions shall be executed despite the filing of a petition for *certiorari* unless a restraining order is issued.

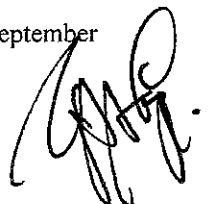
SECTION 4. *Effect of Petition for Certiorari on Execution.* – A petition for *certiorari* with the Court of Appeals or the Supreme Court shall not stay the execution of the assailed decision unless a restraining order is issued by said courts.

It is in the context of the foregoing that the only remedy available to a party aggrieved in a decision of the NLRC is a petition for *certiorari* before the CA, and for which the petitioner must show that such remedy is the only plain, speedy, and adequate remedy.²⁵ As shown above, Abergos's failure to file a motion for reconsideration meant that when he filed his petition for *certiorari*, it was not the only plain, speedy, and adequate remedy available.

Having failed to perfect the remedy available to him, the Court is constrained to reinstate the NLRC Resolution dated May 24, 2017, which, following the 2011 NLRC Rules as quoted above, should have already attained finality and executed, as there is no indication in the records that the CA had issued any injunction.

²⁴ See *id.*

²⁵ See *St. Martin Funeral Home v. National Labor Relations Commission*, G.R. No. 130866, September 16, 1998, 295 SCRA 494.



If the NLRC Resolution dated May 24, 2017 has not yet been executed, interest on the monetary awards shall earn interest at six percent (6%) *per annum* counted from finality of the NLRC Resolution until fully paid.²⁶

And even if the Court were to excuse Abergos's failure to file a motion for reconsideration and the CA's failure to dismiss it outright, the NLRC did not commit grave abuse of discretion when it received evidence on appeal. As the Court held in *Nicol v. Footjoy Industrial Corp.*:²⁷

Indeed, it only bears stressing that the NLRC is not precluded from receiving evidence on appeal as technical rules of evidence are not binding in labor cases. On the contrary, the Labor Code explicitly mandates it to "use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process."²⁸ (Citations omitted)

Important to note as well, the LA had awarded separation pay in lieu of reinstatement and to which petitioners did not file an appeal. Petitioners, in effect, already admitted to their liability to Abergos for backwages, separation pay, and attorney's fees.

However, when the NLRC modified the LA Decision to direct reinstatement, it was then that petitioners submitted the pieces of evidence to show the existence of strained relations. And to the mind of the Court, the NLRC did not commit grave abuse of discretion when it received evidence, as enumerated above, as these were timely submitted when petitioners moved for the reconsideration of the NLRC's directive to reinstate Abergos. Further, the NLRC did not commit grave abuse of discretion in its ruling on the existence of strained relations, as this was supported by substantial evidence.

The Court shall no longer discuss petitioners' argument on the existence of a supervening event as what it claims as a supervening event happened in 2019,²⁹ two years after the NLRC Resolution had attained finality in due course.

WHEREFORE, premises considered, the Petition is **GRANTED**. The Decision dated June 18, 2018 and Resolution dated February 13, 2019 of the Court of Appeals in CA-G.R. SP No. 151770 are **REVERSED** and **SET ASIDE**. The Resolution dated May 24, 2017 of the National Labor Relations Commission in NLRC LAC No. 02-000504-17 is **REINSTATED**. The Labor Arbiter is directed to recompute the monetary awards, including interest, following the guidelines in this Decision, if still unpaid.

²⁶ See *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439.

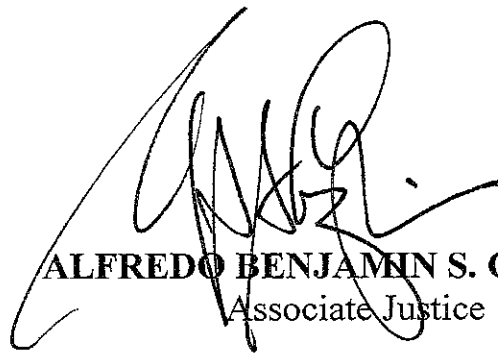
²⁷ G.R. No. 159372, July 27, 2007, 528 SCRA 300.

²⁸ *Id.* at 312.

²⁹ See *rollo*, p. 42.

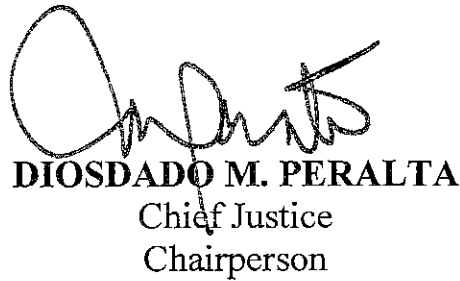


SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

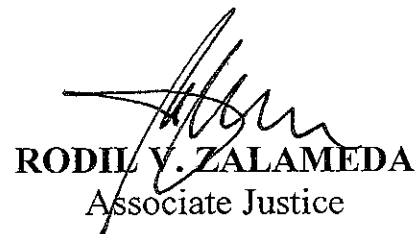
WE CONCUR:



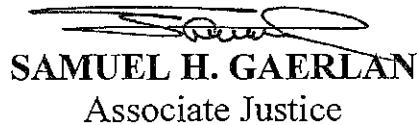
DIOSDADO M. PERALTA
Chief Justice
Chairperson



ROSMARI D. CARANDANG
Associate Justice



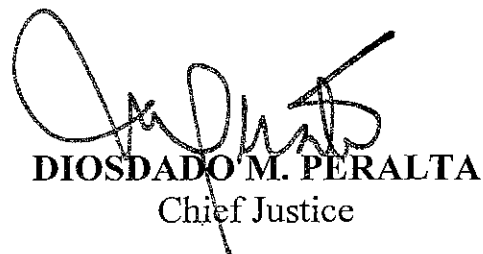
RODIL V. ZALAMEDA
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

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



DIOSDADO M. PERALTA
Chief Justice