Republic of the Philippines
Supreme Court
Baguio City

THIRD DIVISION

LEE T. ARROYO,
Petitioner,

- versus -

THE HONORABLE COURT OF APPEALS and ULYSSES A. BRITO,
Respondents.

G.R. No. 202860

Present:

DEL CASTILLO,* *J.*,
LEONEN,
Acting Chairperson,
A. REYES, JR.,
HERNANDO, and
CARANDANG,** *JJ.*

Promulgated:

April 10, 2019

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DECISION

REYES, A., JR., *J.*:

This is a petition for *certiorari*[1] under Rule 65 of the Rules of Court, seeking to nullify the Resolutions dated December 7, 2010[2] and June 8, 2012[3] of the Court of Appeals (CA) in CA-G.R. SP No. 60768. In these resolutions, the CA granted the motion of respondent Ulysses A. Brito (Brito) to execute the Decision[4] dated August 30, 2004 of the CA in the same case, which partially granted the petition for *quo warranto* initiated against petitioner Lee T. Arroyo (Arroyo) and several other individuals.

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* Designated as additional Member per Raffle dated April 1, 2019 *vice* Associate Justice Diosdado M. Peralta. On wellness leave.

** Designated as additional Member per Special Order No. 2624 dated November 28, 2018.

1 *Rollo*, pp. 3-25.

2 Penned by Associate Justice Jose C. Reyes, Jr. (now a Member of this Court), with Associate Justices Fernanda Lampas Peralta and Romeo F. Barza concurring; id. at 29-33.

3 Id. at 35-36.

4 Penned by Associate Justice Ruben T. Reyes (now a Retired Member of this Court), with Associate Justices Perlita J. Tria Tirona and Jose C. Reyes, Jr. (now a Member of this Court) concurring; id. at 81-92.

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Factual Antecedents

This case arose from the enactment of Republic Act (R.A.) No. 8371, otherwise known as "The Indigenous Peoples' Rights Act of 1997,"[5] which resulted in the reorganization of two (2) offices: (1) the Office for Northern Cultural Communities (ONCC);[6] and (2) the Office of Southern Cultural Communities (OSCC).[7] Pursuant to the passage of R.A. No. 8371, the ONCC and OSCC were merged as the organic offices of the National Commission on Indigenous Peoples (NCIP). The reorganization likewise entailed the creation of several offices subsumed under the NCIP, which are tasked to implement its policies: (a) the Ancestral Domains Office; (b) the Office on Policy, Planning and Research; (c) the Office of Education, Culture and Health; (d) the Office on Socio-Economic Services and Special Concerns; (e) the Office of Empowerment and Human Rights; (f) the Administrative Office; and (g) the Legal Affairs Office.[8] Meanwhile, the functions of the regional and field offices of the ONCC and OSCC were retained under the new organizational structure of the NCIP.[9]

Upon the effectivity of R.A. No. 8371, the positions of Staff Directors, Bureau Directors, Deputy Executive Directors and Executive Directors, except the positions of Regional Directors and below, were phased-out.[10] Absorbed personnel were nonetheless subject to the qualifications set by the Civil Service Commission and the Placement Committee created pursuant to Section 77 of R.A. No. 8371.[11]

Brito, who was then the Regional Director for Region V of the OSCC, was temporarily appointed to the same position pursuant to the NCIP Executive Director's Memorandum Order No. 01-98 dated May 23, 1998.[12]

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5 Approved on October 29, 1997.

6 Executive Order No. 122-B, Creating the Office for Northern Cultural Communities (Approved: January 30, 1987).

7 Executive Order No. 122-C, Creating the Office for Southern Cultural Communities (Approved: January 30, 1987).

8 R.A. No. 8371, Section 46.

9 R.A. No. 8371, Section 48.

10 R.A. No. 8371, Section 74.

11 Id. **SEC. 77.** *Placement Committee.* — Subject to rules on government reorganization, a Placement Committee shall be created by the NCIP, in coordination with the Civil Service Commission, which shall assist in the judicious selection and placement of personnel in order that the best qualified and most deserving persons shall be appointed in the reorganized agency. The Placement Committee shall be composed of seven (7) commissioners and an ICCs'/IPs' representative from each of the first and second level employees' association in the Offices for Northern and Southern Cultural Communities (ONCC/OSCC), nongovernment organizations (NGOs) who have served the community for at least five (5) years and peoples organizations (POs) with at least five (5) years of existence. They shall be guided by the criteria of retention and appointment to be prepared by the consultative body and by the pertinent provisions of the civil service law.

12 *Rollo*, pp. 82-83.

On August 31, 2000, a list of appointees to the positions of Regional Directors and Bureau Directors of the NCIP was transmitted to the NCIP Executive Director. Among them was Arroyo, who was appointed as the Regional Director of Region V.[13]

Unsatisfied with the appointment of Arroyo and three (3) other appointees,[14] Brito, together with several other individuals formerly holding the positions of Bureau Director and Regional Director,[15] initiated a petition for *quo warranto* to challenge their appointment before the CA.[16] Brito invoked his right to security of tenure under R.A. No. 6656,[17] and argued that Arroyo does not possess the required Career Executive Service (CES) eligibility for the position of Regional Director.[18]

Arroyo accordingly refuted these arguments in her comment to the petition for *quo warranto*.[19] She argued that Brito cannot invoke the right to security of tenure because his appointment was made in a temporary capacity.[20] Arroyo also questioned the standing of Brito to initiate the *quo warranto* petition, and argued that Brito was not qualified to be a Regional Director of the NCIP.[21]

In a Decision[22] dated August 30, 2004, the CA partially granted the petition for *quo warranto* insofar as Brito and his co-petitioner Amador P. Batay-an (Batay-an) were concerned, *to wit*:

> WHEREFORE, the petition for *quo warranto* is PARTLY GRANTED. [Batay-an] and **[Brito] are hereby reinstated to their former positions as Regional Director**, NCIP for the Cordillera Administrative Region (CAR) and Region V, respectively. However, the petition of Rudita Blanco and Ben Tandoyog is DISMISSED for lack of merit.
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> SO ORDERED.[23] (Emphasis Ours)

The CA held that since Section 74 of R.A. No. 8371 did not phase-out the Regional Director positions, the incumbent Regional Directors were retained, subject to the qualifications prescribed under Civil Service Rules

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13 Id. at 83-84.
14 Namely, Jose Tamani, Emmanuel Quiling, and Leilene Carantes-San Juan; id. at 40.
15 Namely, Amador P. Batay-an, Rudita B. Blanco, Ben G. Tandoyog; id. at 41-42.
16 Id. at 37-58.
17 AN ACT TO PROTECT THE SECURITY OF TENURE OF CIVIL SERVICE OFFICERS AND EMPLOYEES IN THE IMPLEMENTATION OF GOVERNMENT REORGANIZATION. Approved on June 10, 1988.
18 *Rollo*, pp. 49-53.
19 Id. at 60-77.
20 Id. at 61-62.
21 Id. at 66-68, 72-73.
22 Id. at 81-92.
23 Id. at 92.

and the standards set by the newly-created Placement Committee.[24] Since Brito held a Career Executive Service Officer (CESO) Rank III eligibility, with a percentage score of 85.10 from the Placement Committee, he possessed the necessary qualifications as Regional Director for Region V. Consequently, the CA found that Brito should not have been removed from office and replaced with Arroyo.[25]

On September 24, 2004, Arroyo moved for the reconsideration of this decision by arguing that the CESO Rank III eligibility of Brito is void. According to Arroyo, Brito falsified his bachelor's degree from the Naga College Foundation (NCF) and there are numerous administrative complaints against Brito regarding this matter. She explained that the argument was raised at that stage of the proceedings because the complaints were filed only after the appointment of Brito as the Officer-In-Charge of the NCIP Regional Office in Region IV, or after the CA rendered its decision in the *quo warranto* petition.[26]

Pending the resolution of her motion, Arroyo filed a Manifestation on February 24, 2006 with the CA. She cited newly discovered evidence supporting her claim that Brito did not obtain a bachelor's degree, which is an academic qualification for the position of Regional Director.[27] Attached to her manifestation is a certified true copy of the Decision dated December 15, 2005, rendered by the Office of the President (OP) in O.P. Case No. 05-F-175, entitled "*Timuay Langhap Rio Olimpio A. Lingating v. Ulysses A. Brito.*" In this decision, the OP affirmed the recommendation of the Presidential Anti-Graft Commission (PAGC) to hold Brito liable for falsifying his scholastic records, or specifically, his bachelor's degree from NCF, *viz.*:[28]

> WHEREFORE, premises considered and as recommended by the [PAGC], [Brito] is hereby found guilty of Dishonesty and Falsification of Official Document and correspondingly imposed the penalty of Dismissal from Government Service including the accessory penalties of cancellation of eligibility, forfeiture of leave credits and retirement benefits, and disqualification for reemployment in the government service, without prejudice to civil and criminal liability.
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> SO ORDERED.[29]

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24 Id. at 87-88.
25 Id. at 89.
26 Id. at 98-102.
27 Id. at 109-110.
28 Id. at 115-120.
29 Id. at 121.

However, the CA remained unmoved by these arguments. Arroyo's motion for reconsideration was denied in the Resolution[30] dated June 30, 2006, thus:

> **ACCORDINGLY**, the motion for partial reconsideration or clarification or affirmation filed by petitioners [Batay-an] and Brito is **DENIED** for lack of merit. The separate motions for reconsideration of respondents San Juan and Arroyo are likewise **DENIED**.
>
> **SO ORDERED.**[31]

Following the resolution of the motion for reconsideration, Arroyo did not elevate the matter to this Court for review.[32] This prompted Brito to file a Motion for Entry of Judgment and for the Issuance of a Writ of Execution dated March 26, 2007, praying for the CA to execute the judgment granting his *quo warranto* petition.[33]

On May 3, 2007, Arroyo opposed this motion and argued that the petition for *quo warranto* was rendered moot and academic by virtue of the decision of the OP in O.P. Case No. 05-F-175, which dismissed Brito from government service for falsifying his college academic records. This OP decision allegedly became final and executory because Brito failed to appeal to the CA.[34]

Brito, on the other hand, countered that the OP decision dismissing him from service was not yet final and executory. He posited that there is an existing appeal from the OP decision, lodged before the CA.[35]

Ruling of the CA

In the first assailed Resolution[36] dated December 7, 2010, the CA granted Brito's motion for execution. The CA found that the Decision dated August 30, 2004 of the CA, granting the *quo warranto* petition of Brito against Arroyo, had become final and executory, thus warranting the enforcement of the decision:

> WHEREFORE, premises considered, instant motion is GRANTED. For purposes of paragraph 2, Section 11, Rule 51 of the 1997 Rules of Civil Procedure, let two (2) photocopies of the Decision rendered by this Court on August 30, 2004 and the partial entry of judgment made

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30 Penned by Presiding Justice Ruben T. Reyes (now a Retired Member of this Court), with Associate Justices Marina L. Buzon and Regalado E. Maambong concurring; id. at 123-126.

31 Id. at 126.

32 Id. at 128.

33 Id. at 127-129.

34 Id. at 133-134.

35 Id. at 141.

36 Id. at 29-33.

> therein be transmitted to the [NCIP] for the issuance of the writ of execution.
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> SO ORDERED.[37]

Consequently, Arroyo filed a Motion for Reconsideration dated December 29, 2010.[38] Arroyo insisted that Brito was dismissed from government service and disqualified from holding government office. In order to further bolster her claim, she attached a certified true copy of the OP's Order dated October 20, 2007, which attested to the finality of its Decision dated December 15, 2005 in O.P. Case No. 05-F-175.[39]

The CA found Arroyo's argument unmeritorious and denied her motion for reconsideration. Hence, in its second assailed Resolution[40] dated June 8, 2012, the CA held that "upon verification from the concerned offices of this Court," Brito indeed appealed the OP decision to the CA.[41]

Aggrieved, Arroyo filed the present petition for *certiorari* assailing the Resolutions dated December 7, 2010 and June 8, 2012 of the CA for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Arroyo insists that Brito is not qualified to hold the position of Regional Director because he falsified his bachelor's degree from NCF. For this reason, Arroyo argues that Brito is not the proper party to initiate the *quo warranto* petition pursuant to Section 5, Rule 66 of the Rules of Court.[42]

As regards the finality of the OP's Decision dated December 15, 2005, Arroyo argues that Brito was unable to establish the existence of his appeal before the CA. Arroyo also alleges that the CA's independent verification of the appeal with its offices was an arbitrary exercise of its jurisdiction.[43]

The Court is therefore asked to resolve whether the CA gravely abused its discretion, amounting to lack or excess of jurisdiction, in directing the execution of its Decision dated August 30, 2004 granting the *quo warranto* petition of Brito.

Ruling of the Court

The Court grants the petition.

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37 Id. at 32-33.
38 Id. at 143-147.
39 Id. at 142, 145.
40 Id. at 35-36.
41 Id. at 36.
42 Id. at 13-19
43 Id. at 16-23.

Courts may modify a final and executory decision when circumstances transpire that render the execution unjust or inequitable.

It is true that the execution of a court's judgment becomes a matter of right upon the expiration of the period to appeal and no appeal was duly perfected.[44] Generally, therefore, courts may no longer review or modify a final and executory judgment. This is otherwise referred to as the principle of immutability of judgments, which dictates that once a decision becomes final, the enforcement or execution of the judgment becomes a purely ministerial act.[45]

This notwithstanding, the doctrine on immutability of judgments admits of the following exceptions: (a) the correction of clerical errors; (b) the so-called *nunc pro tunc* entries that cause no prejudice to any party; (c) void judgments; and (d) whenever circumstances transpire after the finality of the judgments rendering execution unjust and inequitable.[46] The Court applies these exceptions in order to serve the interests of justice.[47]

In this case, Arroyo invoked the last exception, which relates to supervening events. According to Arroyo, the OP's Decision dated December 15, 2005 in O.P. Case No. 05-F-175, which found Brito liable for dishonesty because he falsified his college degree, changed the situation of the parties in such a manner that renders the execution of the *quo warranto* judgment unjust and inequitable.[48] Thus, in granting the enforcement of the *quo warranto* decision, she argues that the CA gravely abused its discretion, amounting to lack or excess of jurisdiction.[49]

A supervening event, in order to apply, must rest on proven or certain facts.[50] Hence, Arroyo should establish through competent evidence that there are events, which transpired after the finality of the decision that altered or modified the parties' situation in such manner that renders the execution of the judgment inequitable, impossible, or unfair.[51] It should directly affect the matter already litigated and settled, or substantially change the rights or relations of the parties.[52]

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44 RULES OF COURT, Rule 39, Section 1.
45 *Vios, et al. v. Pantangco, Jr.*, 597 Phil. 705, 719 (2009).
46 *Sofio, et al. v. Valenzuela, et al.*, 682 Phil. 51, 61 (2012).
47 *FGU Insurance Corp. v. RTC of Makati, Br. 66, et al.*, 659 Phil. 117, 123 (2011).
48 *Rollo*, pp. 13-16.
49 Id. at 12-13.
50 *See Abrigo, et al. v. Flores. et al.*, 711 Phil. 251, 253 (2013).
51 *Go v. Echavez*, 765 Phil. 410, 425 (2015).
52 *Lomondot, et al. v. Judge Balindong, et al.*, 763 Phil. 617, 628 (2015).

While Arroyo raised the fact that Brito falsified his college degree in her motion for the reconsideration of the *quo warranto* decision, it was only on October 30, 2007 that the OP declared final its decision to dismiss and disqualify Brito from government service. By then, the period to appeal to the Court has lapsed without Arroyo filing an appeal,[53] and Brito has commenced the execution of the *quo warranto* decision in his favor.[54] Verily, the supervening event referred to in the present case transpired *after* the finality of the judgment that Brito sought to execute.

More importantly, the OP's Decision dated December 15, 2005 found that Brito falsified his bachelor's degree from NCF. The following factual findings of the PAGC, which the OP affirmed on appeal, resulted in the judgment holding Brito liable for Dishonesty and Falsification of Official Document:

> The sole issue in this case is whether [Brito] may be held administratively liable for dishonesty and grave misconduct for the use of fraudulent academic records. In this regard, the PAGC ruled:
>
> > "In the present case, **the registrar, Josefina P. Villanueva of the [NCF], has declared that [Brito] never obtained a diploma from their institution**.
> >
> > x x x
> >
> > "In the same vein, Ms. Villanueva has shed light to the burning issue by sending to the Commission a copy of the Official Transcript of Records of Mr. Brito. The last page thereof shows that he only completed thirty[-]three (33) units or a total of eleven (11) subjects during his short stay with the [NCF].
> >
> > "The Registrar of the University of Northeastern Philippines likewise issued a certified copy of the transcript of records of Mr. Brito. The initial page thereof shows that the public official in question graduated from the [NCF] with the degree of Bachelor of Arts (A.B.) Major in English in the Summer of 1988, per Special Order (B) No. 1-3209, s. 1988, dated May 27, 1988. Subsequently thereafter, he was able to reap two more degrees.
> >
> > "**The Director of the Commission on Higher Education, Regional Office No. V has opined that**:
> >
> > 'x x x
> >
> > '**Further, this Office has no record of Mr. Brito's Special Order (B) No. 1-3209 dated May 27, 1988 and the aforesaid Special Order number is not authorized code number for Liberal Arts program of this Office**. x x x'

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53 *Rollo*, p. 130.

54 Id. at 127-129.

x x x"

> After review and careful evaluation of the evidence on record and due consideration of the arguments advanced by the respective parties, this Office is disposed to affirm the foregoing factual and legal findings for being logically sound and in accord with law.[55] (Emphases Ours)

Under the law, the Regional Director position is covered by the CES. It is grouped together with the Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Assistant Regional Director, Chief of Department Service, and other officers of equivalent rank as may be identified by the Career Executive Service Board (CESB), all of whom are appointed by the President.[56] CES positions are further classified into the third level, entrance to which is regulated by the CESB.[57]

Admission to any examination for entrance into the career service requires applicants to "furnish full information as to their citizenship, age, **education**, physical qualification, and such other information as may be reasonably relevant to their fitness in the service."[58] If the CSC finds that an applicant intentionally falsified any statement of material fact in his or her application, or attempts to or practices any deception or fraud in connection with the examination, the CSC shall invalidate the exam and the offense shall become ground for the applicant's removal from the service.[59]

In the same manner, the CSC is mandated to disapprove appointments in the career service when the person was dismissed from the service for cause, unless an executive clemency has been granted, or when the appointee made a false statement of any material fact or has practiced or attempted to practice any deception or fraud in connection with his or her appointment.[60]

In line with this, **Section 5, Rule 66 of the Rules of Court[61] explicitly requires that individuals who commence *quo warranto* proceedings in their own name, must establish their eligibility to the public office or position usurped or unlawfully held by the respondent.** If the individual fails to establish this requirement, the Court explained in *Engr. Feliciano v. Villasin*[62] that the action must be dismissed and

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55 Id. at 117-120.

56 Executive Order No. 292, Book V, Title I. Subtitle A, Chapter 2, Section 7(3).

57 Id. at Section 8(c).

58 Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, Rule II, Section 4.

59 Id. at Rule II, Section 6.

60 Id. at Rule V, Section 7(c) and (d).

61 **Sec. 5.** *When an individual may commence such an action.* — A person claiming to be entitled to a public office or position usurped or unlawfully held or exercised by another may bring an action therefor in his own name.

62 578 Phil. 889 (2008).

consequently, the respondent in the *quo warranto* proceeding is entitled to the undisturbed possession of the public office or position:

> In the instance in which the Petition for *Quo Warranto* is filed by an individual in his own name, he must be able to prove that he is entitled to the controverted public office, position, or franchise; **otherwise, the holder of the same has a right to the undisturbed possession thereof. In actions for *Quo Warranto* to determine title to a public office, the complaint, to be sufficient in form, must show that the plaintiff is entitled to the office**. In *Garcia v. Perez*, this Court ruled that the person instituting *Quo Warranto* proceedings on his own behalf, under Section 5, Rule 66 of the Rules of Court, must aver and be able to show that he is entitled to the office in dispute. **Without such averment or evidence of such right, the action may be dismissed at any stage.**[63] (Citation omitted and emphases Ours)

Thus, lacking the requisite qualifications for the controverted public office or position, the petitioner in a *quo warranto* proceeding may not raise the lack of qualification of the supposed usurper.[64] This requirement necessarily proceeds from the ultimate relief that is granted to the individual initiating the *quo warranto* proceeding—which is ousting the incumbent and placing the challenger to the controverted position.

Since Brito was found, by final judgment, liable for Dishonesty and Falsification of Official Documents, the Court agrees that the CA gravely abused its discretion in directing the execution of its judgment on the *quo warranto* petition. The subsequent ruling finding Brito administratively liable for Dishonesty and Falsification of Official Documents, substantially changed the situation of the parties in the present case. By falsifying his scholastic records, Brito became ineligible for admission into the career service. This holds especially true for positions falling within the third level of the career service, which has more stringent eligibility requirements.[65]

Furthermore, the OP decision finding Brito liable for Falsification of Official Document also necessarily invalidated any CES examination that he took for purposes of obtaining the CESO eligibility. As a result, Brito is no longer qualified to become a Regional Director of the NCIP.

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63 Id. at 907.

64 *The Secretary of Justice Cuevas v. Atty. Bacal*, 400 Phil. 1115,1140 (2000).

65 N.B. Under the CSC Memorandum Circular No. 42, series of 1998, Re: Framework for Implementation of Policies on Qualification Standards (December 29, 1998), the general eligibilities resulting from civil service examinations that require less than four years of college studies shall be appropriate for appointment to positions in the *first* level. Those resulting from examinations that require at least four years of college studies are appropriate for appointment to positions in both the first and second levels.

A bachelor's degree is also required for applicants taking the Career Executive Service Examination (*CSEE*), pursuant to CSC Memorandum Circular No.37, series of 1998 (October 20, 1998).

By virtue of his ineligibility and disqualification, neither can Brito claim a better right to the Regional Director position in a *quo warranto* proceeding. Only a person entitled to the controverted position may initiate a *quo warranto* proceeding in his or her own name, in accordance with Section 5, Rule 66 of the Rules of Court. In effect, the Court may no longer inquire on Arroyo's qualifications and eligibility to the contested position.

In any case, the offenses of Dishonesty and Falsification of Official Documents are both classified as grave offenses, respectively punishable by dismissal from the service on the first offense.[66] Dismissal from the service, in turn, carries the accessory penalty of disqualification for reemployment in the government service, among others.[67] Clearly, Brito may not be appointed to any position in the government, much less to the Regional Director position of the NCIP Region V. The execution of the judgment granting the *quo warranto* petition of Brito would therefore be impossible, as this would result in the violation of the relevant civil service laws, rules and regulations. To proceed with the enforcement of the *quo warranto* judgment would not obviously serve the interests of justice.

The CA made findings of fact without a specific citation of the evidence on which it is based.

For his part, Brito denies the fact that the OP decision dismissing him from service and disqualifying him from holding another government position, already became final and executory.[68] In his comment,[69] however, Brito did not present any direct evidence to support his claim. Instead, he relies on the CA's second assailed Resolution dated June 8, 2012,[70] which confirmed that there was indeed an appeal upon "verification from the concerned offices of [the CA]."[71]

On the other hand, Arroyo submitted the certified true copies of the OP's Decision dated December 15, 2005 and Order dated October 30, 2007 in O.P. Case No. 05-F-175 to the CA. As written official acts of a tribunal (*i.e.* the OP), these are considered public documents,[72] which is self-authenticating and requires no further authentication in order to be presented as evidence in court.[73] They also constitute a *prima facie*

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66 Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, Rule XIV, Section 22(a) and (f); CSC Memorandum Circular No. 19, series of 1999, Re: Revised Uniform Rules on Administrative Cases in the Civil Service (September 14, 1999), Rule IV, Section 52(A)(1) and (A)(6).

67 Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, Rule XIV, Section 9.

68 *Rollo*, p. 141.

69 Id. at 197-201.

70 Id. at 35-36.

71 Id. at 36.

72 RULES OF COURT, Rule 132, Section 19.

73 *Rep. of the Phils. v. Sps. Gimenez*, 776 Phil. 233, 272 (2016), citing *Patula v. People*, 685 Phil. 376, 397 (2012).

evidence of the truth of the facts stated therein, and creates a conclusive presumption of their existence and due execution. The presumption may only be overcome by clear and convincing evidence.[74]

Considering the foregoing, it is clear that **Brito bore the burden of evidence to dispute the finality of the OP decision, as evidenced by the OP's Order dated October 30, 2007 that Arroyo submitted to the CA.** However, Brito did not present or submit a single piece of evidence to substantiate his claim. He could have easily presented a copy of his petition for review *via* Rule 43 of the Rules of Court, a pleading that would necessarily originate from him as the aggrieved party, in order to establish that he indeed appealed the ruling of the OP to the CA. Neither did Brito present to the Court any evidence to support his allegations.

Lacking proof to demonstrate the veracity of Brito's positive allegation, the CA gravely abused its discretion in brushing aside Arroyo's submission of the OP's Decision dated December 15, 2005 and Order dated October 30, 2007 in O.P. Case No. 05-F-175. An appeal is a statutory privilege, which must be exercised in the manner provided by law.[75] **The Court therefore cannot simply presume that an appeal was filed without any evidence to substantiate it.** Allegation is not evidence, and the burden of evidence lies with the party who asserts the affirmative of an issue.[76] F aced with the hard evidence that the order of dismissal from service became final and executory, there was no reason for the CA to capriciously "verify" from its offices the veracity of Brito's claim. As a consequence, the CA not only failed to cite specific evidence on which its factual findings were based—its factual findings are patently contradicted by the available proof.

The Court's jurisdiction in a Rule 65 petition is limited to determining whether there was grave abuse of discretion, amounting to lack or excess of jurisdiction, on the part of the CA. This means that the Court is tasked to resolve whether the CA's exercise of discretion was so grave, arbitrary or despotic, that it amounted to an evasion of a positive duty or a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[77]

Nonetheless, grave abuse of discretion refers not merely to palpable errors of jurisdiction, or to violations of the Constitution, the law and jurisprudence. When there is an allegation of gross misapprehension of facts, as in the present case, the error falls within the purview of grave abuse of discretion.[78]

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74 *See Chua v. Westmont Bank, et al.*, 683 Phil. 56, 66 (2012).

75 *Boardwalk Business Ventures, Inc. v. Elvira A. Villareal (deceased), et al.*, 708 Phil. 443, 456 (2013).

76 *Manila Mining Corporation v. Amor, et al.*, 758 Phil. 268, 280-281 (2015).

77 *Pascual v. Burgos*, 776 Phil. 167, 185 (2016).

78 Id., citing *United Coconut Planters Bank v. Looyuko*, 560 Phil. 581, 592 (2007).

Based on the foregoing, the Court finds the petition meritorious. The assailed resolutions of the CA should be annulled and set aside for having been issued with grave abuse of discretion, amounting to lack or excess of jurisdiction. The dismissal of Brito from government service because of Dishonesty and Falsification of Official Documents, as well as his corollary disqualification from reemployment in the government, rendered the execution of the CA's *quo warranto* judgment[79] impossible, inequitable, and unjust.

Effect of the Court's decision to dismiss the petition for quo warranto insofar as Arroyo is concerned.

Unfortunately, the records do not show whether the NCIP implemented the Decision dated August 30, 2004 of the CA pending the resolution of this case. In order to dispose the issues completely, the Court deems it necessary to discuss the effect of the present decision if Brito was reinstated to the contested position, pursuant to the CA's decision.

As early as 1917, the Court in *Lino v. Rodriguez and De Los Angeles*[80] recognized the concept of a *de facto* officer. In that case, the Court had to resolve whether the decision of a judge, who ceased holding his office at the time of its promulgation, was valid. For this purpose, the Court first determined whether the judge was a *de jure* or *de facto* officer at the time of the decision's promulgation, in accordance with the following criteria:

> A judge *de jure* is one who is exercising the office of a judge as a matter of right. He is an officer of a court which has been duly and legally elected or appointed. He is an officer of the law fully vested with all of the powers and functions conceded under the law to a judge which relate to the administration of justice within the jurisdiction over which he presides.
>
> A judge *de facto* is an officer who is not fully invested with *all* of the powers and duties conceded to judges, but is exercising the office of judge under some *color* of right. A judge *de facto* may be said to be one who has the reputation of being the officer he assumes to be and yet is not a good officer in point of law—that is, there exists some defect in his appointment or election and in his right to exercise judicial functions at the particular time. (King *vs.* Bedford Level, 6 East [Eng. Com. Law Rep.], 356; Petersilea *vs.* Stone, 119 Mass., 465; 20 Am. Rep., 335; State *vs.* Carroll, 38 Conn., 449; 9 Am. Rep., 409.)
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> A judge *de facto* is one whose acts, though not those of a lawful officer, the law, upon principles of policy and justice will hold valid so far as they involve the interest of the public and third persons, where the duties of the office were exercised: (*a*) Without a known appointment or election, but under such circumstances of reputation or acquiescence as were calculated to induce people, without inquiry, to submit to or invoke

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79 *Rollo*, pp. 81-92.

80 37 Phil. 186 (1917).

> his action, supposing him to be the officer he assumes to be; (*b*) under color of a known or valid appointment or election, where the officer has failed to conform to some precedent requirement or condition, for example, a failure to take the oath or give a bond, or similar defect; (*c*) **under color of a known election or appointment, void because the officer was not eligible**, or because there was a want of power in the electing or appointing body, or by reason of some defect or irregularity in its exercise, **such ineligibility, want of power or defect being unknown to the public**; and (*d*) under color of an election, or appointment, by or pursuant to a public unconstitutional law, before the same is adjudged to be such. (State *vs.* Carroll, 38 Conn., 449; Wilcox *vs.* Smith, 5 Wendell [N. Y.], 231; 21 Am. Dec., 213; Sheehan's Case, 122 Mass., 445; 23 Am. Rep., 323.)
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> **From the foregoing definitions it will be seen that both *de jure* and *de facto* officers must be in the actual exercise of the functions of the office of judge, either by an absolute right or under a color of right.** If at the time the opinion is promulgated as a decision he is not acting either under an absolute right so to do or under a color of right, then he is acting neither as a judge *de jure* nor *de facto*. x x x.[81] (Emphases Ours and italics in the original)

Simply put, a *de facto* officer exercises his or her authority under a color of an appointment or an election, while a *de jure* officer is legally appointed or elected, and possesses all qualifications to the office. The *de facto* officer is further distinguished from a usurper as the latter acts without any title or color of right to the office.[82]

The Court resorts to the *de facto* officer doctrine to accord validity to the actions of a *de facto* officer during the period of such officer's wrongful tenure, insofar as the public or third persons are concerned.[83] This principle was born of necessity, as the public cannot be expected to investigate the right of a public official to an office before transacting with them. Thus, on the basis of public policy and convenience, the public may assume that officials are legally qualified and in office.[84]

On this basis, it is apparent that the *de facto* officer doctrine is primarily for protecting those who rely on the official acts of persons discharging the duties of a public office, without being lawful officers.[85] It is meant to ensure the functioning of the government "despite technical defects in [the official's] title to office."[86] The Court's explanation in *Tayko v. Capistrano*[87] is enlightening in this regard:

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81 Id. at 191-193.

82 *Tayko v. Capistrano*, 53 Phil. 866, 872 (1928).

83 *Re: Nomination of Atty. Lynda Chaguile as Replacement for IBP Governor for Northern Luzon, Denis B. Habawel*, 723 Phil. 39, 67 (2013).

84 Supra; *See Nacionalista Party v. De Vera*, 85 Phil. 126, 130-131 (1949), citing *Tayko v. Capistrano*, supra, at 872-873; *See also Gamboa, et al. v. CA, et al.*, 194 Phil. 624, 638 (1981).

85 *Monroy v. CA, et al.*, 127 Phil. 1, 7 (1967).

86 Hector S. De Leon & Hector M. De Leon, Jr., The Law on Public Officers and Election Law, 101 (8th ed., 2014), citing 63A Am. Jur. 2d 1080-1081.

87 53 Phil. 866 (1928).

> In these circumstances the remedy prayed for cannot be granted. "The rightful authority of a judge, in the full exercise of his public judicial functions, cannot be questioned by any merely private suitor, nor by any other, excepting in the form especially provided by law. A judge *de facto* assumes the exercise of a part of the prerogative of sovereignty, and the legality of that assumption is open to the attack of the sovereign power alone. Accordingly, it is a well[-]established principle, dating from the earliest period and repeatedly confirmed by an unbroken current of decisions, that the official acts of a *de facto* judge are just as valid for all purposes as those of a *de jure* judge, so far as the public or third persons who are interested therein are concerned. The rule is the same in civil and criminal cases. **The principle is one founded in policy and convenience, for the right of no one claiming a title or interest under or through the proceedings of an officer having an apparent authority to act would be safe, if it were necessary in every case to examine the legality of the title of such officer up to its original source, and the title or interest of such person were held to be invalidated by some accidental defect or flaw in the appointment, election or qualification of such officer, or in the rights of those from whom his appointment or election emanated; nor could the supremacy of the laws be maintained, or their execution enforced, if the acts of the judge having a colorable, but not a legal title, were to be deemed invalid.** As in the case of judges of courts of record, the acts of a justice de facto cannot be called in question in any suit to which he is not a party. The official acts of a *de facto* justice cannot be attacked collaterally. An exception to the general rule that the title of a person assuming to act as judge cannot be questioned in a suit before him is generally recognized in the case of a special judge, and it is held that a party to an action before a special judge may question his title to the office of judge on the proceedings before him, and that the judgment will be reversed on appeal, where proper exceptions are taken, if the person assuming to act as special judge is not a judge *de jure*. The title of a *de facto* officer cannot be indirectly questioned in a proceeding to obtain a writ of prohibition to prevent him from doing an official act, nor in a suit to enjoin the collection of a judgment rendered by him. Having at least colorable right to the office his title can be determined only in a *quo warranto* proceeding or information in the nature of a *quo warranto* at suit of the sovereign." x x x.[88]

As jurisprudence on this doctrine developed, the Court in *Tuanda v. Sandiganbayan*[89] required the presence of the following elements for the application of the *de facto* officer doctrine, *viz.*: (1) there must be a *de jure* office; (2) there must be a color of right or general acquiescence by the public; and (3) there must be actual physical possession of the office in good faith.[90] These elements were later reiterated and applied in the cases of *Re: Nomination of Atty. Lynda Chaguile as Replacement for IBP Governor*[91] and *SPO4 (Ret.) Laud v. People.*[92]

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88 Id. at 872-873.

89 319 Phil. 460 (1995).

90 Id. at 472, citing Hector S. De Leon and Hector M. De Leon, Jr., Law on Public Officers and Election Law, 87-88 (1990 ed.).

91 723 Phil. 39 (2013).

92 747 Phil. 503 (2014).

Notwithstanding the criteria in *Tuanda*, cases involving *de facto* officership were ordinarily assessed depending on whether the public officer exercised the functions of a *de jure* office under a **color of authority**. Actual physical possession of the office in good faith is sparingly discussed.

In the early case of *Rodriguez v. Tan*,[93] the plaintiff therein sought to collect the salaries and emoluments of the Senator position from the defendant, who supposedly usurped his office from 1947 to 1949. According to the plaintiff, the salaries and allowances should follow the legal title to the office. Since the Senate Electoral Tribunal resolved the election protest in the plaintiff's favor, the plaintiff submitted that the defendant is liable for reimbursing the salaries he received during the period he held the contested position. The Court allowed the defendant to retain the salaries he received because he rendered service to the public.

Also, in ruling that the defendant was a *de facto* officer, the Court found that the he was acting under a color of authority, following his proclamation as the winner in the election until he was ousted from the position due to an election protest. The good faith possession of the office was not discussed, but arguably implied from the fact that the defendant was qualified to run for Senator and subsequently, proclaimed as the winner.

Likewise, in *Codilla, et al. v. Martinez, etc., et al.*,[94] the Court primarily relied on the color of title or authority vested on the public officer, who assumed the position of acting mayor despite irregularities in the designation. Meanwhile, in *Re: Nomination of Atty. Lynda Chaguile*,[95] the good faith of the officer was implied from her lack of participation in the scheme to disregard the by-laws of the Integrated Bar of the Philippines (IBP) in her appointment.[96]

In *Laud*,[97] the Court applied the *de facto* officer doctrine based on the presumption of good faith, there being no evidence to the contrary. The Court in *Gamboa, et al. v. CA, et al.*[98] also presumed the good faith on the part of the judge in question, who rendered a decision after tendering his resignation, but before being notified of its acceptance. Remarkably, the Court affirmed the *ratio* of the appellate court as to the relevance of the judge's knowledge regarding the acceptance of his resignation, *to wit*: "[i]nsofar as third persons and the public are concerned, it is immaterial whether or not he had prior unofficial knowledge of the acceptance of his resignation."[99]

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93 91 Phil. 724 (1952).
94 110 Phil. 24 (1960).
95 Supra note 91.
96 Id. at 63.
97 Supra note 92.
98 194 Phil. 624 (1981).
99 Id. at 636.

Clearly, the good faith possession of office is not always one of the standards by which the Court assesses the applicability of the doctrine. Good faith is often presumed or implied, and frequently used as a conclusory statement.

Furthermore, the presence of good faith on the part of the *de facto* officer is ordinarily applied to issues involving the *de facto* officer's entitlement to the salaries and emoluments of the *de jure* office. In *Civil Liberties Union v. Executive Secretary*,[100] the Court struck down the Executive Order allowing cabinet members to hold multiple offices or positions in the government, as this was in violation of the 1987 Constitution. While there was no explicit discussion that the concerned officers possessed their respective additional offices in good faith, the Court deemed them as *de facto* officers, who are "entitled to emoluments for actual services rendered," on the basis of equity and good faith possession of office:[101]

> During their tenure in the questioned positions, respondents may be considered *de facto* officers and as such entitled to emoluments for actual services rendered. It has been held that "in cases where there is no *de jure* officer, **a *de facto* officer, who, <u>in good faith has had possession of the office and has discharged the duties pertaining thereto</u>, is legally entitled to the emoluments of the office, and may in an appropriate action recover the salary, fees and other compensations attached to the office.** This doctrine is, undoubtedly, supported on equitable grounds since it seems unjust that the public should benefit by the services of an officer *de facto* and then be freed from all liability to pay any one for such services.["] Any per diem, allowances or other emoluments received by the respondents by virtue of actual services rendered in the questioned positions may therefore be retained by them.[102] (Emphasis and underscoring Ours)

In contrast, the Court declared in *Monroy v. CA*[103] that despite good faith possession of office, the general rule is to allow the *de jure* officer to recover the salary received by the *de facto* officer during the wrongful tenure. The *de facto* officer takes the salaries at his risk and with the responsibility to account to the *de jure* officer whatever amount that he or she received. The Court emphasized that the *de facto* officer doctrine was formulated mainly for the protection of the public who rely on the official acts of persons discharging the duties of an office without being lawfully entitled thereto.

Verily, in *Monroy*, the *de facto* officer doctrine was applied to accord validity to the official acts done by a *de facto* officer during the wrongful retention of public office. However, the award of salaries and emoluments

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100 272 Phil. 147 (1991).

101 Id. at 172; *see also Malaluan v. COMELEC*, 324 Phil. 676 (1996).

102 Id.

103 127 Phil. 1 (1967).

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to the *de facto* officer was deemed a separate matter, which does not always follow the application of the doctrine.

The Court's rulings in *Monroy* and *Civil Liberties Union* were again mentioned in *Arimao v. Taher*.[104] In *Arimao*, the Court held that following *Monroy*, the *de facto* officer has the duty to account for the salaries received during the wrongful tenure. But since there was no *de jure* officer at that time, the *de facto* officer in that case may be allowed to keep the emoluments, pursuant to the Court's ruling in *Civil Liberties Union*. Again, as in most cases involving this issue, the public officer was considered a *de facto* officer on the basis of the color of authority to the office, without regard to the good or bad faith possession of such office.

In these lights, the Court deems it necessary to separate the element requiring actual physical possession of office in good faith. The *de facto* officer doctrine applies when there is a person "who is in possession of the office and [discharges] its duties under color of authority x x x [which was] derived from an election or appointment, however irregular or informal, so that the incumbent is not a mere volunteer."[105] This is the essential standard of the *de facto* officer doctrine in terms of assessing the effects of the officer's official actions during his or her tenure. The primordial concern that the doctrine seeks to address remains to be the protection of the public, who rely on the acts of a person performing the duties of an office pursuant to an irregular or defective authority. Precluding its application to cases where there was no good faith possession of the office, despite having a color of authority or right to the office, would render the doctrine's purpose nugatory.

Applying this framework to the present case, it is apparent that there is a *de jure* office (*i.e.* Regional Director of the NCIP Region V) resulting from the reorganization and merger of the ONCC and the OSCC to the NCIP. In assuming said office, Brito possessed colorable title to the Regional Director position by virtue of the CA's Decision dated August 30, 2004 granting his *quo warranto* petition. But as previously discussed, his reinstatement as Regional Director is void because Brito is not qualified, having falsified his scholastic records for this purpose. His ineligibility for the position of a Regional Director was unknown to the public at that time.[106]

There being colorable authority to exercise the functions of the contested position, it is proper to apply the *de facto* officer doctrine to the official actions of Brito as *de facto* Regional Director of the NCIP Region V. Brito exercised the duties of the office under a color of a known appointment, which was void because he was not eligible, such ineligibility

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104 529 Phil. 732 (2006).

105 Id. at 749, citing *Civil Service Commission v. Joson, Jr.*, 473 Phil. 844, 858-859 (2004).

106 *Lino v. Rodriguez and De Los Angeles*, supra note 80, at 192.

being unknown to the public.[107] Consistent with the underlying purpose of the doctrine, the official acts of Brito during the period of his wrongful tenure is deemed valid, binding, and effective.

The Court significantly notes, however, that Brito did not possess the Regional Director position in good faith. The finding of falsification is necessarily premised on the fact that Brito was aware of his fabricated academic degree, which enabled him to assume the office. His intention, notwithstanding, the public remained unaware of the defect in Brito's reinstatement as Regional Director of the NCIP. It follows, therefore, that the absence of good faith on the part of Brito does not negate the application of the doctrine. The ostensible authority emanating from the CA's Decision dated August 30, 2004 is sufficient to clothe the official acts of Brito with validity.

Be that as it may, Brito may not retain the salaries and emoluments he received as a *de facto* Regional Director of the NCIP Region V. The Court, in allowing *de facto* officers to keep the salaries of the *de jure* office, relies on the principle of equity. The *de facto* officer who performed the functions of the office in good faith, and actually rendered services for the benefit of the public, must be compensated.[108] Thus, the lack of good faith possession of office disqualifies him from retaining the compensation corresponding to the Regional Director position. He is liable to account for whatever amount he received to the *de jure* officer, which in this case is Arroyo, from the time he was reinstated until the end of his tenure.

For clarity, the *de facto* officer doctrine confers validity to the ***actions*** of an officer having illegitimate title to the office, as if he or she was acting as a *de jure* officer. Its effect is similar to the ratification of acts done outside the scope of one's authority. But the same validity conferred on the official actions of the *de facto* officer is not accorded to the ***individual*** holding the office under a color of right or authority, such that he or she may recover the salaries and emoluments emanating from the office.[109]

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107 Id.

108 *Civil Liberties Union v. Executive Secretary,* supra note 100, at 172; *Rodriguez v. Tan*, supra note 93, at 742; *Funa v. Acting Secretary Agra, et al.*, 704 Phil. 205, 233 (2013).

109 *See* W. Gordon Stoner, *Recover of Salary by a De Facto Officer*, 10(3) Mich. L. Rev., 178, 186 (1912), citing *State v. Carroll*, 38 Conn. 449, 467, <https://repository.law.umich.edu/articles/1155> last visited on March 1, 2019, which reads:

"x x x The incumbent of an office is treated as an officer *de facto*, as was said by Chief Justice Butler, 'not because of any quality or character conferred upon the officer, or attached to him by reason of any defective election or appointment, but a name or character given to his acts by the law for the purpose of validating them.' So we conclude there is no basis in the *de facto* doctrine itself for allowing the incumbent of an office without legal right to recover the salary of the office, even in the absence of another claimant. And it is believed that courts which have found support for this rule in the *de facto* doctrine have misunderstood the term '*de facto* officer' and regarded it as a 'quality or character' of the man rather than a 'quality or character' given to his acts."

Conclusion

In sum, Brito himself is not eligible to hold the contested position, and for this reason, he may not inquire on the qualifications of Arroyo through a petition for *quo warranto*. Furthermore, the final and executory judgment of the OP, finding Brito liable for falsification of his bachelor's degree, has effectively rendered the execution of the *quo warranto* judgment impossible, inequitable, and unjust. The CA therefore gravely abused its discretion, amounting to lack or excess of jurisdiction, in directing the execution of its *quo warranto* decision.

Had the NCIP implemented the CA's decision pending the resolution of this petition, and Brito was actually reinstated to the contested position, his actions as a Regional Director of the NCIP Region V are deemed valid pursuant to the *de facto* officer doctrine. Nonetheless, the Court cannot allow Brito to retain the salaries and emoluments he received as a *de facto* Regional Director, especially since the finding of falsification contradicts the presence of good faith on his part. He is, thus, required to account to Arroyo all the amounts he received by virtue of his position as a *de facto* officer, if there are any.

WHEREFORE, the petition for *certiorari* is **GRANTED.** The Decision dated August 30, 2004 of the Court of Appeals in CA-G.R. SP No. 60768 is hereby **MODIFIED** to direct the dismissal of the petition for *quo warranto* insofar as petitioner Lee T. Arroyo is concerned.

Accordingly, the Resolutions dated December 7, 2010 and June 8, 2012 of the Court of Appeals in the same case are hereby **NULLIFIED** and **SET ASIDE**. Respondent Ulysses A. Brito is directed to account for the salaries and emoluments he received during his tenure as a *de facto* Regional Director at the NCIP Region V, if any.

Let a copy of this Decision be furnished to the National Commission on Indigenous Peoples for its appropriate action.

SO ORDERED.

ANDRES B. REYES, JR.
Associate Justice

WE CONCUR:

(On wellness leave)
MARIANO C. DEL CASTILLO
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice
Acting Chairperson

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

ATTESTATION

I attest 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.

MARVIC M.V.F. LEONEN
Associate Justice
Acting Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, 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.

LUCAS P. BERSAMIN
Chief Justice