Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NEREN VILLANUEVA,
Petitioner,

- versus -

GANCO RESORT AND RECREATION, INC., PETER MARASIGAN, BENJIE MARASIGAN, LUZ MARASIGAN, BOYA MARASIGAN, and SERGE BERNABE,
Respondents.

G.R. No. 227175

Present:

CAGUIOA, *J.*,
Acting Chairperson,
GESMUNDO,*
J. REYES, JR.,
LAZARO-JAVIER, and
LOPEZ,** *JJ.*

Promulgated:
JAN 08 2020

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DECISION

CAGUIOA, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] (Petition) under Rule 45 are the Decision[2] dated June 23, 2016 and Resolution[3] dated September 16, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 143474 which reversed the Decision[4] dated July 30, 2015 and Resolution[5] dated October 19, 2015 of the National Labor Relations Commission (NLRC) and upheld the legality of petitioner Neren Villanueva's dismissal.

Facts

In 2002, respondent Ganco Resort and Recreation, Inc. (GRRI) hired petitioner as a part-time employee in its resort, La Luz Beach Resort and Spa

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* Designated additional Member per Raffle dated December 11, 2019.
** On official leave.
1 *Rollo*, pp. 10-33.
2 Id. at 35-48. Penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Fernanda Lampas Peralta and Nina G. Antonio-Valenzuela.
3 Id. at 50-51.
4 Id. at 70-82.
5 Id. at 85-89.

(La Luz Resort).[6] She became a regular employee on February 1, 2003, and was eventually promoted as head of the Housekeeping Department in 2005 and as head of the Front Desk Department in 2008.[7]

Sometime in 2013, petitioner was charged with violating company policies, *i.e.*, abuse of authority, when she rejected walk-in guests without management approval, and threat to person in authority, when she threatened the assistant resort manager, respondent Serge Bernabe (respondent Bernabe), with physical harm.[8] After the conduct of administrative investigation, GRRI found petitioner guilty of both charges and was meted the penalty of two days suspension without pay for abuse of authority and termination for threat to person in authority.[9] The penalty of termination was, however, reduced to a five-day suspension without pay subject to the agreement that petitioner would be under strict performance monitoring and that any further violation which would warrant suspension would be elevated to immediate dismissal.[10] After serving her suspension, petitioner resumed her task as a receptionist.[11]

In the early part of 2014, petitioner was transferred from the Front Desk Department to the Team Building Department upon the advice of respondent Bernabe.[12] Thereafter, in March 2014, GRRI implemented a reorganization in La Luz Resort and issued a Notice of Employees' Lateral Transfer (Notice to Transfer) to five of its employees, including petitioner.[13] Through the Notice to Transfer, they were informed of the reorganization and were advised that they would be laterally transferred to another department effective immediately. Petitioner was transferred from the Reception Department to Storage Department without diminution in rank and benefits.[14]

However, petitioner refused to sign the Notice to Transfer and remained at the reception area for two days before reporting to her new station on March 4, 2014.[15] Petitioner also sent an e-mail addressed to the management on March 9, 2014 asking questions regarding her transfer.[16]

On March 10, 2014, a Memorandum was issued to petitioner directing her to explain within 24 hours from notice why she should not be penalized for insubordination for her repeated failure to sign the Notice to Transfer.[17] In her handwritten letter dated March 11, 2014, petitioner explained that she

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6 Id. at 71, 154.
7 Id. at 36-37, 71, 154-155.
8 Id. at 37.
9 Id.
10 Id.
11 Id. at 37-38.
12 Id. at 38, 72, 155.
13 Id. at 38.
14 Id.
15 Id.
16 Id. at 38, 72-73.
17 Id. at 38.

refused to sign the Notice to Transfer pending answers to the questions she sent to the management *via* e-mail.[18]

GRRI also issued petitioner a Notice of Preventive Suspension on March 14, 2014 placing her under preventive suspension until March 21, 2014 pending resolution of the charge against her.[19] Petitioner, however, failed to report back to work after the lapse of the period of her preventive suspension on March 22, 2014 until March 26, 2014.[20]

Thus, on March 26, 2014, GRRI's Human Resource (HR) department issued petitioner another Memorandum directing her to report to the HR department within 24 hours and to explain her absences without leave.[21] Upon reporting thereat, petitioner was handed the Termination Notice dated March 21, 2014 advising her that the management found her guilty of "*inhuman and unbearable treatment to person in authority; abuse of authority; serious misconduct – insubordination by not accepting her memorandum of re-assignment by the Executive Committee; and gross and habitual neglect of duties – AWOL*" and had decided to terminate her from employment effective immediately.[22]

Thus, petitioner filed a complaint for illegal dismissal and money claims (*i.e.*, underpayment of wages, non-payment of overtime pay, rest day premium and service incentive leave pay, unfair labor practice, damages, and separation pay).[23]

Ruling of the Labor Arbiter

In a Decision[24] dated March 24, 2015, the Labor Arbiter (LA) found that petitioner was illegally dismissed and directed respondents to pay petitioner full backwages, separation pay, and unpaid service incentive leave. The LA held that petitioner's failure to sign the Notice to Transfer does not in itself constitute serious misconduct and willful disobedience for her act is neither willful in character nor does it imply a wrongful intent. Furthermore, the facts of the case show that petitioner abided with the order of transfer despite her refusal to sign the Notice to Transfer, and that no harm or prejudice was caused to respondents by reason of petitioner's act.

The dispositive portion of the LA's Decision reads:

> **WHEREFORE,** premises considered, the complainant is declared to have been illegally dismissed by respondents. Respondents La Luz Beach Resort and Spa, Inc./Ganco Resort and Recreation, Inc. are ordered

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18 Id. at 39.
19 Id.
20 Id.
21 Id. at 39, 73.
22 Id. at 39.
23 Id.
24 Id. at 154-163.

to pay complainant her separation pay with full backwages in the total amount of **P253,022.43.**

Likewise, it is ordered to pay complainant her unpaid service incentive leave pay in the amount of **P5,679.23.**

All other claims are dismissed for lack of merit.

SO ORDERED.[25]

Respondents appealed the LA's Decision with the NLRC.

Ruling of the NLRC

In a Decision[26] dated July 30, 2015, the NLRC affirmed the LA's findings but modified the award of damages by deleting the award of separation pay.

The NLRC held that while the totality of infractions may justify an employee's dismissal, past infractions for which an employee has already been penalized, as in this case, can no longer be cited as bases for the present offense and cannot be collectively taken to justify an employee's termination. The NLRC also concurred with the LA that petitioner's failure to sign and accept the Notice to Transfer is not *per se* serious misconduct and willful disobedience. Likewise, the NLRC found no basis to dismiss petitioner on the ground of gross and habitual neglect of duties.

However, the NLRC held that petitioner cannot be left completely unaccountable for the two-day delay in complying with the transfer as well as the confluence of her actions revealing a brashness of language and tone. Thus, the NLRC found it just and proper to impose a penalty of three months suspension without pay on petitioner, which is deemed to have been completely served during the pendency of the case.

Lastly, the NLRC deleted the award of separation pay because there is no showing of strained relations between petitioner and respondents, and considering also that petitioner has already been reinstated in the payroll of GRRI upon the latter's receipt of the LA ruling.

The dispositive portion of the NLRC Decision reads:

WHEREFORE, respondents' appeal is **DISMISSED.** The Decision dated March 24, 2015 of Labor Arbiter Danna M. Castillon is **MODIFIED** to (1) **DELETE** the award of separation pay, and (2) order respondents to **PAY** complainant Full Backwages reckoned from her dismissal on March 21, 2014 up to the time reinstatement is actually carried out, **less** the total monthly salary corresponding to complainant's three-month suspension which is deemed to have been fully served.

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25 Id. at 163.

26 Supra note 4.

The rest of the Decision is **AFFIRMED.**

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SO ORDERED.[27]

Aggrieved, respondents sought reconsideration of the said decision but this was denied in a Resolution[28] dated October 19, 2015. Thus, respondents filed a petition for *certiorari* before the CA.

Ruling of the Court of Appeals

In a Decision[29] dated June 23, 2016, the CA reversed and set aside the NLRC ruling and upheld the validity of petitioner's dismissal. The CA held that the NLRC abused its discretion when it failed to apply the principle of totality of infractions and in ruling that petitioner was illegally dismissed from employment. According to the CA, petitioner was already given a stern warning that her next violation of the company policy would warrant her immediate dismissal. The CA found petitioner's refusal to sign the Notice to Transfer as amounting to insubordination or willful disobedience. Thus, her previous infraction of refusal to accept walk-in guests, taken in conjunction with her manifest refusal to accept her new assignment pursuant to the Notice to Transfer, served as valid grounds for her dismissal from employment.

The dispositive portion of the Decision of the CA reads:

> **WHEREFORE,** premises considered, the instant Petition for Certiorari is **GRANTED.** The Decision dated 30 July 2015 and Resolution dated 19 October 2015 of the National Labor Relations Commission in NLRC LAC NO. 07-001824-15 [NLRC CN. RAB IV-05-00735-14-B] are **ANNULED** and **SET ASIDE.** Accordingly, private respondent Neren Villanueva's *Complaint* for illegal dismissal is **DISMISSED.**
>
> **SO ORDERED.**[30]

Petitioner filed a motion for reconsideration but the same was denied in a Resolution dated September 16, 2016. Hence, this Petition.

Petitioner insists that her past infractions cannot be used as basis for her dismissal and that the CA erred in applying the principle of totality of infractions.[31] Petitioner also argues that there is no basis to hold her liable for willful disobedience and habitual neglect of duty.[32] Even assuming that

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27 *Rollo*, pp. 81-82.
28 Supra note 5.
29 Supra note 2.
30 Id. at 47-48.
31 See id. at 18-22.
32 See id. at 22-24.

there were just causes to dismiss her, petitioner asserts that she was not afforded due process by GRRI.[33] Lastly, petitioner also claims entitlement to Service Incentive Leave Pay (SILP).[34]

In their Comment[35] dated November 10, 2017, respondents argue otherwise and aver that the totality of petitioner's infractions showing her willful disobedience to respondents merits her dismissal. Respondents did not, however, dispute petitioner's claim for SILP.

In her Reply[36] dated April 23, 2018, petitioner fortified her arguments.

Issue

Whether the CA erred in reversing the NLRC ruling.

The Court's Ruling

The Petition is partly meritorious.

It is settled that the jurisdiction of the Court under Rule 45 is limited only to questions of law as the Court is not a trier of facts.[37] This rule, however, allows for exceptions such as when the findings of fact of the trial court, or in this case of the quasi-judicial agencies concerned, are conflicting or contradictory with those of the CA.[38]

The main issue in this case is whether petitioner was validly dismissed from employment.

In an illegal dismissal case, the *onus probandi* rests on the employer to prove that the employee's dismissal was for a valid cause.[39] A valid dismissal requires compliance with both substantive and procedural due process[40] – that is, the dismissal must be for any of the just or authorized causes enumerated in Article 297 [282] and Article 298 [283], respectively, of the Labor Code, and only after notice and hearing.[41]

The records of the case show that petitioner was charged with two infractions, *i.e.*, (1) insubordination for her failure to sign the Notice to Transfer and (2) habitual neglect for her absences without leave from March 22 to March 26, 2014, as shown by the two memoranda served on her.

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33 Id. at 24-26.
34 Id. at 26-27.
35 Id. at 278-292.
36 Id. at 324-335.
37 *Gatan v. Vinarao*, G.R. No. 205912, October 18, 2017, 842 SCRA 602, 609.
38 *Janssen Pharmaceutica v. Silayro*, 570 Phil. 215, 226-227 (2008).
39 *Reyes v. Glaucoma Research Foundation, Inc.*, 760 Phil. 779, 789 (2015).
40 *Dagasdas v. Grand Placement and General Services Corporation*, 803 Phil. 463, 478 (2017).
41 *San Miguel Corporation v. NLRC*, 225 Phil. 302 (1989).

In the Memorandum dated March 10, 2014, GRRI charged petitioner with insubordination for her refusal to sign the Notice of Transfer which amounts to a non-compliance with procedure, *viz.:*

> Please explain within 24 hours why you should not be penalized with insubordination by not accepting in writing your memorandum of re-assignment.
>
> You have been re-assigned by the Executive Committee to function in a much needed area where your knowledge is expected to be shared with the need and growth of the company. However, **you refused to comply with its procedure by not signing and affirming your new work assignment**. Further, it has been noticed that **you are reporting and unofficially functioning on your new given assignment when in fact you have not complied with the procedure.**[42] (Emphasis supplied)

Insubordination or willful disobedience requires the concurrence of the following requisites: (1) the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a "wrongful and perverse attitude"; and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.[43] Both requirements are not present in this case.

As stated by petitioner in her handwritten explanation,[44] she withheld her signature on the Notice to Transfer because she was awaiting answers to the questions she raised to the management *via* e-mail. She cannot be forced to affix her signature thereon if she does not really fully understand the reasons behind and the consequences of her transfer.[45] While her action is willful and intentional, it is nonetheless far from being "wrongful and perverse." In addition, respondents failed to prove that there is indeed an order or company procedure requiring a transferee's written conformity prior to the implementation of the transfer, and that such order or procedure was made known to petitioner.

Given the foregoing, there is no basis to dismiss petitioner on the ground of insubordination for her mere failure to sign the Notice to Transfer.

Relevantly, there is also no basis to impose a penalty of three-month suspension without pay on petitioner for her delay in assuming her new role at the Storage Department considering that she was not even cited by GRRI for said act. GRRI is already deemed to have waived its right to terminate or discipline petitioner on such ground. The case of *Exocet Security and Allied Services Corp. v. Serrano*[46] is instructive on this matter, *viz.*:

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42 *Rollo*, p. 122.

43 *Gold City Integrated Port Service, Inc. (Inport) v. NLRC*, 267 Phil. 863, 872 (1990).

44 *Rollo*, pp. 96-98.

45 *See Notice to Transfer*, id. at 92-93, where it is stated that employees who affixed their signature "understood that the lateral transfer did not in any way affect or violated [their] rights as an employee [and that they] agree and accept [the] responsibilities [of their new assignment]."

46 744 Phil. 403 (2014).

> Thus, it is manifestly unfair and unacceptable to immediately declare the mere lapse of the six-month period of floating status as a case of constructive dismissal, without looking into the peculiar circumstances that resulted in the security guard's failure to assume another post. This is especially true in the present case where the security guard's own refusal to accept a non-VIP detail was the reason that he was not given an assignment within the six-month period. The security agency, Exocet, should not then be held liable.
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> Indeed, from the facts presented, Serrano was guilty of willful disobedience to a lawful order of his employer in connection with his work, which is a just cause for his termination under Art. 288 (previously Art. 282) of the Labor Code. **Nonetheless, Exocet did not take Serrano's willful disobedience against him. Hence, Exocet is considered to have waived its right to terminate Serrano on such ground.**[47] (Emphasis supplied; citation omitted)

Thus, the CA erred in imposing a three-month suspension without pay on petitioner.

Anent the charge of habitual neglect for petitioner's absences without leave, jurisprudence provides that in order to constitute a valid cause for dismissal, the neglect of duties must be both gross and habitual.[48] Gross negligence has been defined as "the want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them."[49] On the other hand, habitual neglect "imparts repeated failure to perform one's duties for a period of time, depending on the circumstances."[50] A single or isolated act of negligence does not constitute a just cause for the dismissal of the employee.[51]

Petitioner's four-day absence without leave is not gross nor habitual. Even so, petitioner's absences are still not justified. Petitioner alleged that she did not report back to work after serving her preventive suspension because the management did not reply to her query as to when she needed to report.[52] This reasoning does not justify her absences. The Notice of Preventive Suspension served on her clearly stated that the period of her preventive suspension was from March 14 to March 21, 2014. Thus, she was expected to report back to work on her next working day. Yet, she reported only on March 26, 2014. Therefore, while there may be no basis to dismiss her on the ground of gross and habitual neglect, petitioner is still guilty of having committed a violation. It is here that totality of infractions may be considered to determine the imposable sanction for her current infraction. In

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47 Id. at 420-421.
48 *National Bookstore, Inc. v. Court of Appeals*, 428 Phil. 235, 246 (2002).
49 Id. at 245.
50 *Cavite Apparel, Inc. v. Marquez*, 703 Phil. 46, 55 (2013).
51 *National Bookstore, Inc. v. Court of Appeals*, supra note 48 at 246.
52 *Rollo*, p. 130.

Merin v. National Labor Relations Commission,[53] the Court explained the principle of "totality of infractions" in this wise:

> **The totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee.** The offenses committed by petitioner should not be taken singly and separately. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct and ability separate and independent of each other. While it may be true that petitioner was penalized for his previous infractions, this does not and should not mean that his employment record would be wiped clean of his infractions. After all, **the record of an employee is a relevant consideration in determining the penalty that should be meted out since an employee's past misconduct and present behavior must be taken together in determining the proper imposable penalty**. Despite the sanctions imposed upon petitioner, he continued to commit misconduct and exhibit undesirable behavior on board. Indeed, the employer cannot be compelled to retain a misbehaving employee, or one who is guilty of acts inimical to its interests. It has the right to dismiss such an employee if only as a measure of self-protection.[54] (Emphasis supplied; citations omitted.)

To be sure, the totality of an employee's infractions is considered and weighed in determining the imposable sanction for the current infraction.[55] It presupposes that the employee is already found guilty of the new violation, as in this case. Apropos, it is also worth mentioning that GRRI had already previously warned petitioner that the penalty for her next infraction would be elevated to dismissal. Thus, the dismissal of petitioner, on the basis of the principle of totality of infractions, is justified.

However, the Court notes that petitioner's dismissal is tainted with numerous procedural lapses.

The Court delineated the requirements of procedural due process in *King of Kings Transport, Inc. v. Mamac*,[56] *viz.:*

> (1) The first written notice to be served on the employees should **contain the specific causes or grounds for termination** against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and

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53 590 Phil. 596 (2008).

54 Id. at 602-603.

55 *Aplicador v. Moriroku Philippines, Inc.*, G.R. No. 233133, October 17, 2018 (Unsigned Resolution); *Sy v. Banana Peel*, G.R. No. 213748, November 27, 2017, 846 SCRA 612, 630-631.

56 553 Phil. 108 (2007).

> defenses, **the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.**[57] (Emphasis supplied; citation omitted)

The records show that GRRI failed to observe the foregoing requirements.

First, while the Termination Notice cited four grounds for petitioner's dismissal, the Memorandum dated March 10, 2014 only charged petitioner with insubordination for her refusal to sign the Notice to Transfer. *Second*, petitioner was only given 24 hours to submit an explanation. *Third*, no administrative hearing was held, or even scheduled. *Lastly*, the Termination Notice already cited petitioner's absences without leave as ground for her dismissal even before she was even given any opportunity to be heard.

Considering that a valid cause for petitioner's dismissal exists but the requirements of procedural due process were not observed, the award of nominal damages in the amount of ₱30,000.00 is in order.[58]

With respect to petitioner's claim for SILP, the Court finds that the same is in order. In *RTG Construction, Inc. v. Facto*,[59] the Court awarded money claims, particularly SILP, despite the validity of the employee's dismissal. The first paragraph of Article 95 of the Labor Code provides that every employee who has rendered at least one year of service shall be entitled to a yearly incentive leave of five days with pay. In the present case, petitioner had been in the employ of GRRI since 2002, or for 12 years, hence she is entitled to SILP. Considering that petitioner is claiming non-payment, the burden also rests on GRRI, as the employer, to prove payment.[60] Since, GRRI has not shown any proof that it has paid petitioner SILP or that it is exempted from paying the same, the CA erred in deleting the award of SILP. However, the computation of the LA, as affirmed by the NLRC, must be modified conformably with *Auto Bus Transport Systems, Inc. v. Bautista*.[61]

The LA's computation of SILP due to petitioner is limited only to three years, citing Article 291 of the Labor Code which provides for the three-year prescriptive period for money claims. However, in *Auto Bus Transport Systems, Inc. v. Bautista*, the Court held that the three-year prescriptive period commences not at the end of the year when the employee becomes entitled to the commutation of his service incentive leave, but only from the time the employee becomes entitled to the commutation of his

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57 Id. at 117.

58 *Licap Marketing Corp. v. Baquial*, 737 Phil. 349, 361 (2014) and *Better Buildings, Inc. v. NLRC*, 347 Phil. 521, 531 (1997).

59 623 Phil. 511 (2009).

60 Id. at 520-521.

61 497 Phil. 863 (2005).

service incentive leave, *i.e.,* from the time he demands its commutation or upon termination of his employment, as the case may be.[62] This pronouncement has also been affirmed by the Court in *Rodriguez v. Park N Ride, Inc.*[63] Thus, the computation of petitioner's SILP should cover the period from the beginning of her employment until its termination, as follows:

₱10,000.00 (12) / 365 (5 days) (12 years) = ₱19,726.02

Finally, legal interest at the rate of 6% *per annum* is imposed on the total monetary award from the finality of this Decision until full payment.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is **PARTLY GRANTED.** The Court of Appeals Decision dated June 23, 2016 in CA-G.R. SP No. 143474 is **AFFIRMED** but subject to **MODIFICATION.**

Respondent Ganco Resort and Recreation, Inc. is ordered to pay petitioner Neren Villanueva Thirty Thousand Pesos (₱30,000.00) as nominal damages, and Nineteen Thousand Seven Hundred Twenty-Six and 2/100 Pesos (₱19,726.02) as service incentive leave pay. The total monetary award shall be subject to interest rate of 6% *per annum* from the finality of this Decision until full payment.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Associate Justice

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62 Id. at 877.
63 807 Phil. 747 (2017).

JOSE C. REYES, JR.
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

(On official leave)
MARIO V. LOPEZ
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.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Acting Chairperson, First 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.

DIOSDADO M. PERALTA
Chief Justice