Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

EDUARDO G. JOVERO, *Petitioner,*	**G.R. No. 202466**
- versus -	Present:
ROGELIO CERIO, JESUS ALBURO, JR., GIL CLAVECILLAS, DOMINGO ZEPEDA, RAUL CLERIGO, DOMINGO CANTES, MARCELINO COPINO, CEAZAR CAÑEZO, LEVY LEGAZPI, EUSTAQUIO RANGASA, ELMAR CONVENCIDO, and **ACHILES DYCOCO,** Respondents.	LEONEN, *J.*, * HERNANDO, *Acting Chairperson,* INTING, DELOS SANTOS, and LOPEZ, J. Y., *JJ.*
	Promulgated: June 23, 2021 MisADC Bath

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DECISION

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[1] assails the December 22, 2010 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 103349, which reversed and set aside the February 18, 2008 Decision[3] and September 24, 2002 Resolution[4] of the National Labor Relations Commission (NLRC)

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* On Wellness Leave.

1 *Rollo*, pp. 4-28.

2 Id. at 30-44; penned by Associate Justice Ruben C. Ayson and concurred in by Associate Justices Amelita G. Tolentino and Normandie B. Pizarro.

3 CA *rollo*, pp. 51-57; penned by Commissioner Perlita B. Velasco and concurred in by Commissioners Gerardo C. Nograles and Romeo L. Go.

4 Id. at 58-67; penned by Commissioner Alberto R. Quimpo and concurred in by Commissioners Roy v. Señeres and Vicente S.E. Veloso.

finding that respondents were not illegally dismissed. In a September 26, 2011 Resolution,[5] the CA did not reconsider its earlier Decision.

Antecedent Facts:

Respondents Rogelio Cerio, Jesus Alburo, Jr., Gil Clavecillas, Domingo Zepeda, Raul Clerigo, Domingo Cantes, Marcelino Copino, Ceazar Cañezo, Levy Legazpi, Eustaquio Rangasa, Elmar Convencido, and Achiles Dycoco (respondents) were hired on various dates by Sigma Construction and Supply (Sigma), an independent contractor owned by Eduardo G. Jovero (Jovero). As cement cutters, respondents were assigned to work at the drilling site of Philippine Geothermal Inc. (PGI), beginning in April 1990. However, PGI preterminated one of its contracts with Sigma on April 1, 1993, which was initially supposed to end on October 31, 1993. Due to such termination, the project manager of Sigma issued a notice[6] to all cement cutters, informing them that the contract with PGI will be effective only until April 30, 1993.

Sometime in August 1993, respondents filed a complaint[7] for illegal dismissal, underpayment of wages and non-payment of labor standard benefits against Sigma and PGI. Their case was later on consolidated with the cases of Job Capis, *et al.* and Crispino Miguel, *et. al.* Thereafter, Executive Labor Arbiter Vito C. Bote (Executive Labor Arbiter Bote) rendered a March 30, 1994 Decision[8] dismissing the complaints for lack of merit. However, Jovero was ordered to pay each of the respondents ₱1,000.00 as indemnity. The complainants in the Capis, *et. al.* and Miguel *et. al.* cases filed an appeal to the Commission on April 27, 1994, while the complainants in the Cerio *et. al.* case appealed on May 4, 1994. Hence, all records of the three (3) cases were forwarded to the Commission.

On March 31, 1995, the Third Division of the Commission rendered a Decision[9] remanding the cases to the Arbitration Branch of origin for the determination of the legality of complainants' dismissal and their nature of employment. It also pointed out in its dispositive portion that only Capis *et. al.* and Miguel *et. al.* filed an appeal. After remand of the records of the said cases to the branch of origin, Executive Labor Arbiter Bote rendered a Decision and restated his earlier findings and conclusion in his March 1994 Decision. On the other hand, it was only in 1996 when the Cerio *et. al.* case was remanded to the then new Executive Labor Arbiter Gelacio L. Rivera Jr. (Executive Labor Arbiter Rivera). He called the parties to a hearing, but they still failed to reach an amicable settlement.

Jovero alleged that Sigma is an independent contractor that hired respondents as project employees to work on the former's projects with PGI.

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5 Id. at 50-51.
6 *Rollo*, p. 14.
7 Id. at 86-97.
8 CA *rollo*, pp. 68-85.
9 Id. at 131-142.

Necessarily, when PGI preterminated its latest contract with Sigma, the latter was forced to terminate the employment of respondents seeing that the need for their services was dependent on its contract with PGI. Simply put, respondents' services were coterminous with Sigma's projects with PGI. Therefore, they were hired and rehired in accordance with the duration of Sigma's contracts with PGI. Consequently, Jovero averred that it would be unjust to require Sigma to retain respondents in its employ in the absence of projects with PGI. Nevertheless, he claimed that the respondents were paid wages and benefits in accordance with the law.

On the other hand, respondents argued that they were not just project employees because they were continuously hired and assigned to different PGI projects from the beginning of their employment in 1990 until their recent termination in 1993. In fact, respondents were even transferred to other projects prior to the completion of a previously assigned project. They also claimed that they were not limited to performing work as cement cutters, but they also cleaned canals and pipes, fixed tools, and other related work at PGI.

Ruling of the Labor Arbiter:

On July 31, 2011, Executive Labor Arbiter Rivera rendered a Decision,[10] the dispositive portion of which states:

> WHEREFORE, judgment is hereby rendered in favor of complainants ordering respondent Sigma Construction and Supply and its owner Sigrid Jovero to pay:
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> 1. Rogelio A. Cerio – P376,532.67 plus P10,000 as damages
> 2. Elmar Convencido – P376,532.67 plus P10,000 as damages
> 3. Ceasar Cañezo – P376,532.67 plus P10,000 as damages
> 4. Levy Legaspi – P370,188.67 plus P10,000 as damages
> 5. Jesus Alburo, Jr. – P376,532.67 plus P10,000 as damages
> 6. Eustaquio Rangasa – P376,532.67 plus P10,000 as damages
> 7. Domingo Cantes – P379,704.67 plus P10,000 as damages
> 8. Achiles Dacoco – P397,150.67 plus P10,000 as damages
> 9. Marcelino Copino – P447,518.33 plus P10,000 as damages
> 10. Domingo Zepeda – P443,748.33 plus P10,000 as damages
> 11. Gil Clavecillas – P416,655.00 plus P10,000 as damages
> 12. Raul Clerigo – P357,905.98 plus P10,000 as damages
>
> within ten (10) days from receipt hereof though this Arbitration Branch.
>
> SO ORDERED.[11]

The arbiter held that herein respondents were regular employees of Sigma considering that they: (1) were continuously hired and employed for more than a year; (2) were transferred to various projects even prior to the completion of a previously assigned project; and (3) performed tasks not

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[10] Id. at 157-169.
[11] Id. at 167.

limited to being cement cutters. Moreover, petitioner did not submit any evidence to controvert these allegations. Petitioner should have submitted employment records such as appointment papers or contracts of employment for a specific project to show that respondents were only hired for such specific purpose or phase of a project. Furthermore, it held that petitioner should have adduced in evidence the termination report submitted to the Department of Labor and Employment (DOLE) every time its employees' services were terminated upon the completion or termination of the project they were assigned to. As regular employees, the Labor Arbiter found that they were illegally dismissed due to petitioner's failure to abide by the notice and just cause requirements under the Labor Code. As such, they were entitled to separation pay instead of reinstatement, as well as backwages. Anent the issue on labor standard benefits, the same was denied for respondents' failure to substantiate its claim.

Ruling of the National Labor Relations Commission:

In its September 21, 2001 Memorandum on Appeal[12] to the NLRC, petitioner averred that the Labor Arbiter abused his discretion in finding that respondents were regular employees of Sigma and that they were illegally dismissed. He attached Sigma's contracts[13] with PGI and reiterated that the hiring and rehiring of respondents were based on the duration of the contracts (1) from May 1, 1990 – December 31, 1990; (2) August 1, 1991 – October 31, 1991; (3) May 1, 1992 – April 30, 1993; and (4) January 1, 1993 – October 31, 1993. As project employees, he posited that their employment may be terminated upon completion or expiration of the project for which they have been engaged in. Accordingly, PGI's pretermination of the contract with Sigma entailed respondents' termination as well. He also added that the tasks performed by respondents did not pertain to different kinds of work. As shown in PGI's contract with Sigma, cleaning canals and pipes and fixing tools are under the latter's Scope of Work.[14]

In their Opposition to Memorandum on Appeal,[15] respondents averred that the arbiter's Decision had already become final and executory considering that the ten-day period within which to appeal had already lapsed before petitioner filed his appeal.

In its September 24, 2002 Resolution,[16] the labor tribunal granted the appeal and dismissed the cases for lack of merit. However, it ordered the payment of P1000.00 to each complainant for petitioner's failure to submit a termination report to the DOLE. The dispositive portion of the Resolution states:

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[12] Id. at 172-188.
[13] Id. at 209-247.
[14] Id. at 175.
[15] Id. at 191-193.
[16] Id. at 58-67.

> WHEREFORE, the appeal of respondent Sigma Construction and Supply is hereby **GRANTED.** Accordingly, the decision of the Executive Labor Arbiter dated July 31, 2001 is hereby **VACATED** and **SET ASIDE** and another judgment entered **DISMISSING** the above-entitled cases for lack of merit. However, Sigma Construction and Supply is hereby ordered to pay each of the complainants the sum of P1,000.00 by way of penalty imposed on it for failure to observe the requirements of the Labor Code.
>
> SO ORDERED.[17]

The NLRC noted that Executive Labor Arbiter Bote made a general finding that upon expiration of a Service Contract with PGI, the employment of workers is deemed terminated since there was no evidence showing that they belong to a work pool from which the petitioner could utilize them in another project. On the other hand, Executive Labor Arbiter Rivera found that in the absence of a specific Service Contract with specific duration, the employment of respondents is deemed to be continuous and regular.

However, the NLRC noted that in his Memorandum of Appeal, petitioner has attached these service contracts. Thus, in the interest of substantial justice and prevailing jurisprudence on the matter, it admitted the evidence, though belatedly submitted. Moreover, it pointed out that respondents failed to dispute the genuineness and authenticity of such contracts, despite having the opportunity to do so. Therefore, the contracts indubitably proved that respondents' employment is coterminous with the completion or termination of each project.

Ruling of the Court of Appeals:

Aggrieved, respondents filed a Petition for *Certiorari*[18] before the CA alleging grave abuse of discretion amounting to lack or in excess of jurisdiction on the part of the labor tribunal when it gave due course to Jovero's appeal despite filing it beyond the reglementary period, and holding that respondents were project employees who were legally terminated.

In his Comment[19] to respondents' Petition for *Certiorari*, petitioner averred that the NLRC aptly decided the case on the merits rather than mere technicality, in the higher interest of substantial justice. He also maintained that respondents were project employees. Thus, the award of backwages and separation pay was without basis.

In compliance with its July 3, 2009 Resolution,[20] the respective parties filed their respective memoranda[21] with the CA.

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17 Id. at 67.
18 Id. at 14-50.
19 Id. at 334-353.
20 Id. at 364.
21 Id. at 376-419; 486-510.

On December 22, 2010, the CA rendered its assailed Decision[22] granting respondents' Petition for *Certiorari* and setting aside the September 24, 2002 Resolution and February 18, 2008 Decision of the NLRC. The dispositive portion of the Decision states:

> **WHEREFORE,** the Petition is **GRANTED**. The assailed Resolution and Decision of NLRC, promulgated on September 24, 2002 and February 18, 2008, respectively, are **REVERSED** and **SET ASIDE**. The Decision, dated July 31, 2001 by Executive Labor Arbiter Gelacio L. Rivera, Jr., is hereby ordered **REINSTATED.**
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> **SO ORDERED.**[23]

The CA found that the petitioner's appeal to the NLRC was belatedly filed. It gave credence to the Bailiff Proof of Service[24] and Notice of Judgment/Final Order[25] attached to respondents' Opposition to Memorandum on Appeal, showing that petitioner's counsel, through his employee, received the Decision on August 21, 2001 and not on September 11, 2001 as stated in petitioner's Memorandum on Appeal. Thus, the last day to file the appeal fell on August 31, 2001. Additionally, even if the CA brushes aside this procedural lapse, it concluded that respondents were regular employees and concurred with Executive Labor Arbiter Rivera's findings, to wit:

> As complainant's assertion that they continuously worked with respondent assigned at PGI in its different projects and were in fact transferred to other projects even before its completion or were also assigned to work other than their original assignment were not disproved by respondent by way of evidence, complainants, clearly are not project employees by regular employees of respondent.[26]

Petitioner filed a Motion for Reconsideration[27] but the CA denied the same in its September 26, 2011 Resolution.[28] Hence, the instant Petition.

Issues

Petitioner raised the following issues: (1) whether the appeal belatedly filed by the petitioner before the NLRC can be given due course; and (2) whether respondents were regular employees and illegally dismissed by the petitioner.

Our Ruling

We find no merit in the petition.

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[22] *Supra* note 2.
[23] *Rollo*, p. 44.
[24] CA *rollo*, p. 170.
[25] Id. at 193.
[26] *Rollo*, p. 43.
[27] Id. at 45.
[28] Id. at 50-51.

To begin with, it is clear that the present petition was filed out of time. There is no dispute that petitioner received the copy of the CA Resolution dated September 26, 2011 on October 5, 2011. The period within which to file a petition for review under Rule 45 is fifteen (15) days from notice of the judgment or final order or resolution appealed from. Thus, petitioner had until October 20, 2011 to file his petition. However, records show that the present petition was filed only on July 19, 2012, or about nine (9) months after the lapse of the reglementary period. Petitioner claims that he was working abroad as an OFW and returned only on July 6, 2012. During the interim, petitioner was not able to communicate to his counsel his intention to file a Petition for Review on *Certiorari.* This Court finds petitioner's justification unsubstantiated, as no travel records were even provided by petitioner to support his claim. Notwithstanding the technical infirmities, this Court deems it judicious to take cognizance of the case to put the issues to rest.[29]

The question on whether respondents are project employees is a question of fact. As general rule, a petition for review under Rule 45 should only raise questions of law, as this Court is not a trier of facts.[30] However, this Court may exercise its equity jurisdiction when the findings of facts and conclusions of the Labor Arbiter, NLRC, and CA are conflicting with each other.[31] In the present case, the findings of the Labor Arbiter and CA on one hand, and the NLRC on the other, differ from each other. Consequently, the conflicting verdicts of the lower tribunals constrain this Court to invoke its equity jurisdiction and review the records of the case to arrive at its own conclusion.[32]

According to the CA, the NLRC gravely abused its discretion when it gave due course to Jovero's appeal, which was filed twenty-one (21) days after the lapse of the reglementary period for filing an appeal. Moreover, the circumstances did not warrant the liberal application of rules since Jovero did not provide any explanation which would justify his belated filing.

We agree.

When a party is represented by counsel of record, service of orders and notices must be made upon such counsel.[33] As a well-settled rule, such notice to counsel is tantamount to notice to the client.[34] Similarly, the 2011 NLRC Rules of Procedure (NLRC Rules) governing the issuance and service of notices and resolutions provides:

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[29] *Metropolitan Manila Development Authority v. Jancom Environmental Corporation*, 425 Phil. 961, 973 (2002).

[30] *Tiu v. Pasaol*, 450 Phil. 370, 379 (2003) citing *Aklan Electric Cooperative, Inc. v. National Labor Relations Commission*, 380 Phil. 225 (2000).

[31] *PCL Shipping Philippines, Inc. v. National Labor Relations Commission*, 540 Phil. 65, 74-75 (2006) citing *Lopez Sugar v. Franco*, 497 Phil. 806 (2005).

[32] *Jao v. BCC Products Inc.*, 686 Phil. 36, 42 (2012).

[33] *Spouses Soriano v. Soriano*, 558 Phil. 627, 641-642 (2007).

[34] *Zoleta v. Secretary of Labor*, 248 Phil. 777, 782 (1988).

> Section 4. *Service of Notices, Resolutions, Orders and Decisions.* — a) Notices and copies of resolutions or orders, shall be served personally upon the parties by the bailiff or duly authorized public officer within three (3) days from his/her receipt thereof or by registered mail or by private courier;
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> b) In case of decisions and final awards, copies thereof shall be served on both parties and their counsel or representative by registered mail or by private courier; Provided that, in cases where a party to a case or his/her counsel on record personally seeks service of the decision upon inquiry thereon, service to said party shall be deemed effected as herein provided. Where parties are numerous, service shall be made on counsel and upon such number of complainants, as may be practicable and shall be considered substantial compliance with Article 224 (a) of the Labor Code, as amended. **For purposes of appeal, the period shall be counted from receipt of such decisions, resolutions, or orders by the counsel or representative of record.**
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> c) **The bailiff or officer serving the notice, order, or resolution shall submit his/her return within two (2) days from date of service thereof, stating legibly in his/her return his/her name, the names of the persons served and the date of receipt, which return shall be immediately attached and shall form part of the records of the case.** In case of service by registered mail or by private courier, the name of the addressee and the date of receipt of the notice, order or resolution shall be written in the return card or in the proof of service issued by the private courier. If no service was effected, the reason thereof shall be so stated.[35] (Emphasis ours)

Considering that the Bailiff Proof of Service and Notice of Judgment/Final Order show that Jovero's counsel received Labor Arbiter Rivera's Decision on August 21, 2001, and that the reglementary period indubitably lapsed before he filed his appeal, the CA correctly held that the NLRC gravely abused its discretion when it took cognizance of and even granted Jovero's appeal. Lest we forget, perfection of an appeal in the manner and within the period prescribed by law is not a mere technicality, but jurisdictional.[36] Hence, failure to perfect an appeal as required by the Rules renders the judgment final and executory.[37] The case of *Paramount Vinyl Products Corporation v. National Labor Relations Commission*[38] is instructive:

> Well-settled rule that the perfection of an appeal within the statutory or reglementary period is not only mandatory, but jurisdictional. Failure to interpose a timely appeal (or a motion for reconsideration) renders the assailed decision, order or award final and executory that deprives the appellate body of any jurisdiction to alter the final judgment. x x x The rule is 'applicable indiscriminately to one and all since the rule is grounded on fundamental consideration of public policy and sound practice that at the risk of occasional error, the judgment of courts and award of quasi-judicial agencies must become final at some definite date fixed by law.'[39]

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[35] 2011 NLRC Rules of Procedure, Rule III, Sec. 4.
[36] *Narag v. National Labor Relations Commission*, 239 Phil. 194, 201-202 (1987). Citation omitted.
[37] Id.
[38] G.R. No. 81200, October 17, 1990, 190 SCRA 525 (2009).
[39] Id. at 533-534.

Thus, in *Mai Philippines Inc., v. National Labor Relations Commission,*[40] We held:

> So, too, it was clearly wrong, and in grave abuse of discretion, for the Commission to fail or refuse to take account of the fact — clearly shown by the record and to which its attention had repeatedly been drawn — that the appeal taken by Nolasco from the decision of Arbiter Lasquite of August 2, 1984, dismissing his complaint, was late, because perfected on September 24, 1984, twelve (12) days after service on him of notice of the decision on September 12, 1984, the reglementary period for appeal being fixed by the Labor Code at ten (10) days. No acceptable reason has been advanced by Nolasco, and none appears upon the record, to excuse his tardiness in the taking of the appeal. MAI's opposition to the appeal should have been sustained, and the NLRC should never have taken cognizance of the appeal. In doing so, and in resolving the appeal adversely to MAI, it acted so whimsically, capriciously and arbitrarily as to call for this Court's correcting hand.[41] (Citations omitted)

While this Court is mindful that procedural lapses have been previously disregarded and appeals filed beyond the reglementary period have been given due course, it necessitates strong and compelling reasons to do so.[42] In the present case, the CA correctly held that the absence of such exceptional circumstances to justify the belated filing of an appeal with the NLRC rendered Labor Arbiter Rivera's Decision final and executory.

Nevertheless, even setting aside the issue on filing an appeal beyond the reglementary period, this Court concurs with the findings and conclusions of the Labor Arbiter and the appellate court that respondents were regular employees of Sigma.

Petitioner supports his argument that respondents are only project employees by attaching Sigma's Service contracts with PGI it its Memorandum of Appeal filed with the NLRC. Petitioner cites the case of *Cartagenas v. Romago Electric Co., Inc.*[43] *(Cartegenas)* as a similar factual milieu, which held that the employees were not permanent or regular employees since the duration of their employment was coterminous with the projects they were assigned to. However, *Cartagenas* is strikingly different from the present case.

In *Cartagenas*, the employer was able to present documentary exhibits which showed that the employees were assigned to various projects over a period of time. The documents also proved that they were temporarily laid off when the project was suspended, and subsequently rehired once it resumed. In that case, they were able to present the project employment contracts between the employer and its employees. Contrastingly, Jovero only presented Sigma's Service Contracts with PGI. Nowhere in the contracts did it show that

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[40] 235 Phil. 186 (1987).
[41] Id. at 197.
[42] *Angat v. Republic*, 609 Phil. 146, 165 (2009).
[43] 258 Phil. 445 (1989).

respondents were parties to such contract. More importantly, it did not prove that respondents were hired for the projects with PGI.

The case of *Olongapo Maintenance Services, Inc. v. Chantengco*[44] is more applicable:

> The principal test in determining whether an employee is a project employee is whether he/she is assigned to carry out a "specific project or undertaking," the duration and scope of which are specified at the time the employee is engaged in the project, or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season. A true project employee should be assigned to a project which begins and ends at determined or determinable times, and be informed thereof at the time of hiring.
>
> In the instant case, the record is bereft of proof that the respondents' engagement as project employees has been predetermined, as required by law. **We agree with the Court of Appeals that OMSI did not provide convincing evidence that respondents were informed that they were to be assigned to a "specific project or undertaking" when OMSI hired them. Notably, the employment contracts for the specific project signed by the respondents were never presented. All that OMSI submitted in the proceedings a quo are the service contracts between OMSI and the MIAA. Clearly, OMSI utterly failed to establish by substantial evidence that, indeed, respondents were project employees and their employment was coterminous with the MIAA contract.**[45] (Citations omitted; Emphasis ours)

Clearly, the presentation of service contracts between the employer and their client (even if it shows the duration of the project), in lieu of the employees' individual employment contracts, does not establish that the latter are project employees. There was no other substantial evidence offered to prove that respondents were informed at the time of their hiring, that they were project employees. Moreover, petitioner's failure to file termination reports at the end of each project was an indication that respondents were regular employees.[46]

In view of all the foregoing, petitioner failed to prove through substantial evidence that respondents are project employees. It is evident that respondents were illegally dismissed due to petitioner's failure to comply with the substantive and procedural due process tenets under the Labor Code.

WHEREFORE, the instant petition is hereby **DENIED**. The December 22, 2010 Decision and September 26, 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 103349 are **AFFIRMED**. The case is hereby ordered **REMANDED** to the labor arbiter for the computation of the amounts due each respondent.

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[44] 552 Phil. 338 (2007).

[45] Id. at 336-337.

[46] Id. at 336 citing *Philippine Long Distance Telephone Company v. Ylagan*, 537 Phil. 840 (2006).

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice
Acting Chairperson

WE CONCUR:

On Wellness Leave.
MARVIC M. V. F. LEONEN
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

JHOSEP Y. 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.

RAMON PAUL L. HERNANDO
Associate Justice
Acting Chairperson

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.

ALEXANDER G. GESMUNDO
Chief Justice