



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE

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SECOND DIVISION

BELINA A. CONCEPCION, G.R. No. 247677
Petitioner,

Present:

- versus -

PERLAS-BERNABE,* *S.A.J.,*
Chairperson,
HERNANDO,** *Acting Chairperson,*
INTING,
GAERLAN, and
DIMAAMPAO, *JJ.*

THE INVESTIGATION OFFICE OF THE OMBUDSMAN, **FIELD OFFICE OF THE OMBUDSMAN,**
Respondent.

Promulgated:

OCT 11 2021

X ----- X

DECISION

INTING, J.:

Before the Court is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision² dated December 18, 2018 and the Resolution³ dated May 28, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 150180. The CA affirmed the Decision⁴ dated October 21, 2015 and the Order⁵ dated December 1, 2016 of the Office of the Ombudsman (Ombudsman) in OMB-C-A-14-0012 finding Belina A. Concepcion (petitioner), along with her co-respondents therein, guilty of Grave Misconduct and

* On official leave.
** Per Special Order No. 2846 dated October 6, 2021.
¹ *Rollo*, pp. 12-30.
² *Id.* at 35-46; penned by Associate Justice Victoria Isabel A. Paredes with Associate Justices Marlene Gonzales-Sison and Rafael Antonio M. Santos, concurring.
³ *Id.* at 48-49.
⁴ *Id.* at 73-130; signed by Graft Investigation and Prosecution Officer I (GIPO I) and Team Leader Jasmine Ann B. Gapatan with recommending approval of GIPO IV and Executive Officer M.A. Christian O. Uy and approved by Ombudsman Conchita Carpio Morales.
⁵ *Id.* at 131-148; signed by GIPO II Amethyst L. Dulig, reviewed by GIPO IV and Executive Officer M.A. Christian O. Uy, and approved by Ombudsman Conchita Carpio Morales.

Conduct Prejudicial to the Best Interest of the Service, and imposing upon her the penalty of dismissal from service.

The Antecedents

On March 22, 2013, the National Bureau of Investigation (NBI) agents rescued Benhur Luy (Luy) from the illegal detention perpetrated by Janet Lim Napoles (Napoles) and her brother, Reynald Lim. After the rescue, Luy averred that Napoles illegally detained him in connection with the discharge of his responsibilities as the lead employee of the Janet Lim Napoles Corporation (JLN). At the time, JLN was purportedly involved in overseeing the anomalous implementation of several government-funded projects sourced from, among others, the Priority Development Assistance Fund (PDAF) of several lawmakers of the Republic of the Philippines.⁶

The NBI conducted further investigation on the allegations of misuse and irregularities attending the implementation and utilization of the PDAF of certain lawmakers in connivance with other government employees, private individuals, and non-government organizations (NGOs).⁷ Thereafter, the NBI uncovered a scheme, now commonly referred to as the *PDAF* or *Pork Barrel Scam*, detailed as follows:

1. Either the lawmaker or Napoles would commence negotiations on the utilization of the lawmaker's PDAF;
2. The lawmaker and Napoles then discuss, and later approve, the list of projects chosen by the lawmaker, the corresponding Implementing Agency (IA), through which the projects would be coursed, and the project cost, as well as the lawmaker's "commission" which would range between 40%-60% of either the project cost or the amount stated in the Special Allotment Release Order (SARO);
3. After the negotiations and upon instruction of Napoles, Luy would prepare the so-called "listing" which contains the list of projects allocated by the lawmaker to Napoles and her NGOs, the name of the IA, and the project cost;
4. The lawmaker would then adopt the "listing" and write to the Senate President and the Finance Committee, in the case of a

⁶ *Id.* at 74-75.

⁷ *Id.* at 75.

Senator, and to the Speaker of the House and Chairperson of the Appropriations Committee, in the case of a Congressman, requesting the immediate release of his allocation, which letter-request the Senate President or Speaker of the House, as the case may be, would then endorse to the Department of Budget and Management (DBM);

5. The DBM soon issues a SARO addressed to the chosen IA, indicating the amount deducted from the lawmaker's PDAF allocation, and later issues a Notice of Cash Allocation (NCA) to the IA which would thereafter issue a check to the Napoles-controlled NGO listed in the lawmaker's endorsement;
6. Napoles would then recommend to the lawmaker an NGO to implement the project and direct one of her employees to prepare a letter for the lawmaker's signature endorsing said NGO to the IA. The IA later prepares a Memorandum of Agreement (MOA) covering the project to be executed by the lawmaker or his/her authorized staff member, the IA and the chosen NGO;
7. The Head of the IA, in exchange for a 10% share in the project cost, subsequently releases the check/s to the Napoles-controlled NGO, from which bank accounts Napoles would withdraw the proceeds; and
8. Succeeding tranche payments are released by the IA upon compliance and submission by the NGO of the required documents.⁸

From years 2001 to 2010, then Congressman Samuel Dangwa (Congressman Dangwa), the representative of the Lone District of Benguet, endorsed the implementation of his PDAF-funded livelihood projects in his district to the NGOs associated with Napoles. The NGOs included the Social Development Program for Farmers Foundation, Inc. (SDPFFI), Peoples Organization for Progress and Development Foundation, Inc. (POPDFI), and Countrywide Agri and Rural Economic and Development Foundation, Inc. (CARED).⁹

The Field Investigation Office (FIO) of the Ombudsman likewise conducted a parallel fact-finding investigation taking into consideration the Special Audits Office Report of the Commission on Audit (COA) containing the audit findings on the PDAF allocations and disbursements

⁸ *Id.* at 75-76.

⁹ *Id.* at 76-77.

covering the years 2007-2009 (COA Report).¹⁰

The observations of the COA in the COA Report were: (1) that the Implementing Agencies (IAs), which included the National Agribusiness Corporation (NABCOR), National Livelihood and Development Corporation (NLDC), and the Technology Resource Center (TRC), did not implement the PDAF-funded projects; (2) that the IAs directly released the funds to the NGOs contravening the Department of Budget and Management regulations; (3) that the releases were made at the behest of the sponsoring legislator; (4) that almost all of the NGOs receiving the PDAF did not have a track record on implementation of government projects and had questionable details; (5) that the selection of the NGOs and procurement of the goods for distribution to the beneficiaries did not undergo public bidding; and (6) that the supposed suppliers or beneficiaries denied having dealt with the NGOs which is contrary to the NGOs' claims. Also, the COA found that the supposed suppliers and beneficiaries were either unknown or could not be located.¹¹

On January 16, 2014, the FIO, Ombudsman filed an administrative complaint¹² for Grave Misconduct, Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service against petitioner, who was then the Sales and Promotion Supervisor V and Legislative Liaison Officer (LLO) of the TRC and 13 others¹³ in connection with the anomalous utilization of the PDAF of Congressman Dangwa for the years 2007-2009.¹⁴

The complaint alleged that petitioner participated in the preparation and execution of the agreements governing the implementation of the projects; and that she also facilitated, processed,

¹⁰ *Id.* at 84.

¹¹ *Id.* at 84-85.

¹² Entitled, "*Field Investigation Office v. Victor Roman C. Cacal, et al.*," and docketed as OMB-C-A-14-0012; *id.* at 73.

¹³ Also charged were Victor Roman C. Cacal, General Services Supervisor, National Agribusiness Corporation (NABCOR); Romulo M. Relevo, Unit Head, General Services, NABCOR; Shyr Ann Montuya, Accounting Assistant, NABCOR; Emmanuel Alexis G. Sevidal, Director IV, National Livelihood and Development Corporation (NLDC); Ofelia E. Ordoñez, Chief Budget Specialist, NLDC; Filipina T. Rodriguez, Budget Officer, NLDC; Gondelina G. Amata President (Non-elective), NLDC; Chita C. Jalandoni, Director IV, NLDC; Sofia D. Cruz, Project Development Officer IV, NLDC; Dennis L. Cunanan, Director General, Technology Resource Center (TRC); Consuelo Lilian R. Espiritu, Budget Officer IV, TRC; Marivic V. Jover, Chief Accountant, TRC; and Maureen E. Dimaranan, Internal Auditor, TRC; *id.* at 73-74.

¹⁴ *Id.* at 73.

and approved the PDAF disbursements to CARED.¹⁵ It further alleged, specifically, that petitioner oversaw the processing of PDAF releases to CARED and assisted in the preparation and review of the memoranda of agreement with the latter.¹⁶

In her defense, petitioner argued that she was designated as the LLO of TRC in 2006 when all transactions of Priscilla Cioco, the former LLO, were transferred to her. These included the documents involving the release of the PDAF of Congressman Dangwa for livelihood projects such as Memorandum of Agreement (MOA), Special Allotment Release Order (SARO) Approval, Endorsement Letter, Project Proposal and Work Plan that were already complete when referred to her by TRC Director-General Antonio Ortiz (TRC Director-General). She admitted having prepared a recommendation letter for the release of the PDAF which is a mere standard operating procedure; it did not mention CARED or any specific NGO as the IA.¹⁷

Moreover, she asserted that: (1) her job was ministerial and done in good faith; (2) the recommendation letter was approved by the Legal Department and she relied on the latter's approval; (3) she was not part of the negotiations or meetings between and among CARED officials, Congressman Dangwa, or the TRC Director-General; and (4) she was not privy to the selection of CARED as the IA.¹⁸

Ruling of the Ombudsman

In the Decision¹⁹ dated October 21, 2015, the Ombudsman found petitioner and her co-respondents²⁰ guilty of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service, and meted out the penalty of dismissal from service. It ruled that the acts of petitioner which included the preparation and execution of the MOA governing the implementation of the fictitious projects, as well as facilitating, processing, and approving the PDAF disbursements to the questionable Napoles NGOs, constituted grave misconduct and conduct prejudicial to

¹⁵ *Id.* at 111.

¹⁶ *Id.* at 112.

¹⁷ *Id.* at 92.

¹⁸ *Id.*

¹⁹ *Id.* at 73-130.

²⁰ The administrative case was dismissed against Shyr Ann Montuya and Maureen Dimaranan for insufficiency of evidence; *id.* at 128.

the best interest of the service.²¹ The Ombudsman noted that the participation of petitioner and her co-respondents in the processing and release of PDAF allocations allowed Napoles and her cohorts to defraud government coffers; that public funds, in the form of PDAF allocations, were misappropriated through fictitious/inexistent projects; and that the IAs served as conduits or channels to facilitate the transfer of funds to undeserving NGOs.²² Thus:

WHEREFORE, this Office, through the undersigned:

- (a) FINDS respondent VICTOR ROMAN C. CACAL, ROMULO M. RELEVO, EMMANUEL ALEXIS G. SEVIDAL, OFELIA E. ORDOÑEZ, FILIPINA T. RODRIGUEZ, GONDELINA G. AMATA, CHITA C. JALANDONI, SOFIA D. CRUZ, DENNIS L. CUNANAN, CONSUELO LILIAN R. ESPIRITU, MARIVIC V. JOVER, and BELINA A. CONCEPCION GUILTY of GRAVE MISCONDUCT and CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE, and are hereby meted the penalty of DISMISSAL from the service, including all the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for re-employment in the government service.

In the event that the penalty of Dismissal can no longer be enforced due to the respondent's separation from the service, the same shall be converted into a Fine in the amount equivalent to respondent's salary for one (1) year, payable to the Office of the Ombudsman, and may be deductible from respondent's retirement benefits, accrued leave credits or any receivable from his/her office; and

- (b) DISMISSES the administrative charges against SHYR ANN MONTUYA and MAUREEN DIMARANAN for insufficiency of evidence.

SO ORDERED.²³

Petitioner sought for a reconsideration²⁴ of the Decision but the

²¹ *Id.* at 122.

²² *Id.* at 123.

²³ *Id.* at 127-128.

²⁴ See Motion for Reconsideration dated March 13, 2015, *id.* at 149-165.

Ombudsman denied it in an Order²⁵ dated December 1, 2016.

Ruling of the CA

In the Decision²⁶ dated December 18, 2018, the CA affirmed the Decision of the Ombudsman finding petitioner administratively liable for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service. The CA ruled that petitioner did not even bother to verify the transactions relative to the release of the PDAFs;²⁷ that she immediately recommended the release of the funds without conducting any inquiry or investigation on the NGO which, as later discovered, did not even go through public bidding;²⁸ that her failure to exercise her functions diligently when she recommended the release of PDAF of Congressman Dangwa was in complete disregard of Republic Act No. 9184,²⁹ as well as its implementing rules and regulations, the Government Procurement Policy Board regulations, and national budget circulars; and that her acts constituted grave misconduct which resulted in loss of public funds and undue injury to the government,³⁰ and conduct prejudicial to the best interest of the service in that they tarnished the image and integrity of her public office.³¹

Petitioner filed a Motion for Reconsideration³² of the CA Decision. However, the CA denied it in a Resolution³³ dated May 28, 2019.

Hence, the petition before the Court.

The Issue

The issue to be resolved in the case is whether the CA erred in ruling that petitioner is administratively liable for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service that warrants her dismissal from the service.

²⁵ *Id.* at 131-148.

²⁶ *Id.* at 34-46.

²⁷ *Id.* at 43.

²⁸ *Id.* at 44.

²⁹ Government Procurement Reform Act, approved on January 10, 2003.

³⁰ *Rollo*, p. 44.

³¹ *Id.* at 42 and 45.

³² *Id.* at 203-208.

³³ *Id.* at 48-49.

Petitioner asserts that she acted in good faith and was merely exercising ministerial functions when she drafted the letter recommending the release of funds for the livelihood project of Congressman Dangwa. She pointed out that the documents submitted to her, namely: Work and Financial Plan; Project Proposal; MOA signed by the NGO and the lawmaker; Endorsement Letter from the lawmaker; SARO; Notice of Case Allocation; and Disbursement Voucher were found by the TRC Director-General to be complete; and by the Legal Department in order. Verily, petitioner insists that she was merely following a lawful order of her superior when she was instructed to draft the recommendation letter for the release of the funds.³⁴ Moreover, petitioner asserts that she had nothing to do with the selection of the NGO, specifically CARED, as the conduit of TRC in implementing the PDAF-funded projects of Congressman Dangwa.³⁵

Thus, petitioner counters that the elements of Grave Misconduct were not adequately proven as far as she is concerned³⁶ and that her act of drafting a recommendation letter for the release of the PDAF of Congressman Dangwa was not tantamount to conduct prejudicial to the best interest of the service.³⁷ She asserted that as a government employee for almost 25 years, she had proven herself to be an honest and dedicated employee with integrity, contrary to the allegations of the Ombudsman of her participation in the fraudulent PDAF scheme.³⁸

In its Comment,³⁹ the Ombudsman maintains that its findings were supported by substantial evidence in that petitioner conspired with the other officials of TRC in the elaborate plan of illegally funneling government funds into bogus NGOs.⁴⁰ It points out that the duties of petitioner as an LLO were, among others, to ensure that the projects were implemented effectively. However, the Ombudsman contends that petitioner was remiss in her duties because she did not monitor the project which resulted in the misappropriation of public funds; and that she still recommended the release of the PDAF despite the red flags such as the non-delivery of assistance kits and packages to the supposed

³⁴ *Id.* at 23.

³⁵ *Id.* at 24.

³⁶ *Id.*

³⁷ *Id.* at 25.

³⁸ *Id.*

³⁹ *Id.* at 224-240.

⁴⁰ *Id.* at 233.

beneficiaries, lack of public bidding, and lack of track record of the NGOs involved.⁴¹

Further, the Ombudsman avers that the funds in question could not have been transferred to the NGOs were it not for the certifications, approvals, and signatures by TRC officials found in the disbursement recommendation letters, vouchers, and checks; thus, petitioner's recommendation letter provided for the link which eventually paved the way for the release of public funds to CARED.

The Court's Ruling

The petition lacks merit.

At the outset, the Court emphasizes that as a general rule, factual findings of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when affirmed by the CA.⁴² In the case, the CA upheld the ruling of the Ombudsman finding petitioner guilty of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifested in the former.⁴³

⁴¹ *Id.* at 234-235.

⁴² *Sabio v. FIO, Office of the Ombudsman*, 825 Phil. 848, 857 (2018), citing *Office of the Ombudsman, et al. v. PS/Supt. Espina*, 807 Phil. 529, 540 (2017) further citing *Cabalit v. Commission on Audit-Region VII*, 679 Phil. 138, 157-158 (2012).

⁴³ *Id.* at 858, citing *Office of the Deputy Ombudsman for Luzon v. Dionisio, et al.*, 813 Phil. 474, 487-488 (2017).

Here, the pieces of evidence demonstrate grave misconduct on the part of petitioner when she facilitated the illegal transfer of public funds to CARED, a Napoles-controlled NGO. As earlier stated, petitioner oversaw the processing of PDAF releases to CARED and assisted in the preparation and review of the memoranda of agreement with the latter.

Petitioner insists that her duties as Sales and Promotion Supervisor V and LLO of TRC are purely ministerial or limited to ascertaining that the documents necessary for the release of the PDAF are complete. However, as the Ombudsman found, petitioner had the duty to monitor, approve, and recommend the release of the PDAFs.⁴⁴ The duties necessarily involve the examination and evaluation of documents which, in turn, entail discretion and sound judgment. To be sure, certifying the release of funds, approving, and affixing of signature in disbursement vouchers, obligation slip, and checks are acts which are neither mere formalities nor ministerial functions. They involve the exercise of sound discretion that must be diligently performed by the concerned officials as these are imbued with public interest.⁴⁵

In sum, petitioner committed grave misconduct when she disregarded her duties by not even bothering to verify whether the transactions relative to the release of the PDAFs were in accordance with existing laws, rules, and regulations. Despite the presence of the red flags such as lack of public bidding and questionable profile of the NGO, she still recommended the release of the PDAF resulting in the misappropriation of public funds.

Meanwhile, conduct prejudicial to the best interest of the service has no specific definition under Civil Service Laws.⁴⁶ Be that as it may, the acts or omissions previously considered by the Court as conduct prejudicial to the best interest of the service were enumerated in the case of *Catipon v. Japson*⁴⁷ as follows:

The corresponding penalty for conduct prejudicial to the best interest of the service may be imposed upon an erring public officer as

⁴⁴ *Rollo*, p. 43.

⁴⁵ *Id.* at 124.

⁴⁶ *Ipong v. Special Panel, Office of the Ombudsman*, G.R. No. 231664 (Notice), February 19, 2018.

⁴⁷ 761 Phil. 205 (2015).

long as the questioned act or conduct taints the image and integrity of the office; and the act need not be related to or connected with the public officer's official functions. Under our civil service laws, there is no concrete description of what specific acts constitute conduct prejudicial to the best interest of the service, but the following acts or omissions have been treated as such: misappropriation of public funds; abandonment of office; failure to report back to work without prior notice; failure to safekeep public records and property; making false entries in public documents; falsification of court orders; a judge's act of brandishing a gun, and threatening the complainants during a traffic altercation; a court interpreter's participation in the execution of a document conveying complainant's property which resulted in a quarrel in the latter's family; selling fake Unified Vehicular Volume Program exemption cards to his officemates during office hours; a CA employee's forging of receipts to avoid her private contractual obligations; a Government Service Insurance System (GSIS) employee's act of repeatedly changing his IP address, which caused network problems within his office and allowed him to gain access to the entire GSIS network, thus putting the system in a vulnerable state of security; a public prosecutor's act of signing a motion to dismiss that was not prepared by him, but by a judge; and a teacher's act of directly selling a book to her students in violation of the Code of Ethics for Professional Teachers. In petitioner's case, his act of making false entries in his CSPE application undoubtedly constitutes conduct prejudicial to the best interest of the service; the absence of a willful or deliberate intent to falsify or make dishonest entries in his application is immaterial, for conduct grossly prejudicial to the best interest of the service may or may not be characterized by corruption or a willful intent to violate the law or to disregard established rules.⁴⁸

The CA ruled correctly that petitioner's blatant disregard of laws and failure to discharge her duties properly tarnished the image and integrity of the office she held. Thus, there was no error on the part of the CA in finding petitioner guilty of conduct prejudicial to the best interest of the service. Prejudice to the service is not only through wrongful disbursement of public funds or loss of public property. Greater damage comes with the public's perception of corruption and incompetence in the government.⁴⁹

All told, the Court sees no reason to deviate from the conclusions reached by the Ombudsman which were affirmed by the CA. Petitioner's

⁴⁸ *Id.* at 221-222. Citations omitted.

⁴⁹ *Castro v. Task Force Abono-Field Investigation Office*, G.R. No. 240766 (Notice), October 17, 2018, citing *Japson v. Civil Service Commission*, 663 Phil. 665, 677 (2011).

role in the PDAF scheme and her blatant disregard of her functions under the laws, rules, and regulations were duly established and proven; thus, making her guilty of grave misconduct. Likewise, as a result of her acts and omissions, the image and integrity of the TRC were tainted, thereby making her guilty of Conduct Prejudicial to the Best Interest of the Service.

Sections 46(A)(3) and (B)(8)⁵⁰ of Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS)⁵¹ both classify Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service as grave offenses with the corresponding penalties of dismissal from the service and suspension of six (6) months and one (1) day to one (1) year, respectively, for the first offense. Section 52(a) of the RRACCS also states that the penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office, and bar from taking civil service examinations.

WHEREFORE, the petition is **DENIED**. The Decision dated December 18, 2018 and Resolution dated May 28, 2019 of the Court of Appeals in CA-G.R. SP No. 150180 are **AFFIRMED**. Petitioner Belina A. Concepcion is hereby found **GUILTY** of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service, and is ordered **DISMISSED** from the service with forfeiture of all retirement benefits except accrued leave credits, with prejudice to reemployment in any branch or instrumentality of the government, including government-owned and -controlled corporations.

⁵⁰ Section 46(A)(3) and (B)(8) of Rule 10 of the Revised Rules on Administrative Cases in the Civil Service provides:

Section 46. *Classification of Offenses.* – Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following grave offenses shall be punishable by dismissal from the service :

x x x x

3. Grave Misconduct;

x x x x

B. The following grave offenses shall be punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from the service for the second offense:

x x x

8. Conduct prejudicial to the best interest of the service;

x x x x

⁵¹ Promulgated on November 8, 2011.

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:

(On official leave)
ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson


RAMON PAUL L. HERNANDO
Associate Justice


SAMUEL H. GAERLAN
Associate Justice


JAPAR B. DIMAAMPAY
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

