Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

RELIABLE INDUSTRIAL AND COMMERCIAL SECURITY AGENCY, INC. and/or RONALD P. MUSTARD, Petitioners,	**G.R. No. 190924**
-versus-	Members: GESMUNDO, *C.J., Chairperson,* CAGUIOA, LAZARO-JAVIER, LOPEZ, M., and LOPEZ, J., *JJ.*
THE HONORABLE COURT OF APPEALS, ANTONIO C. CAÑETE, AND MARGARITO AUGUIS, Respondents.	Promulgated: SEP 14 2021

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DECISION

LAZARO-JAVIER, *J.:*

The Case

This Petition for *Certiorari*[1] seeks to reverse and set aside the Decision dated March 23, 2009[2] and Resolution dated November 27, 2009[3] of the Court of Appeals in CA-G.R. SP No. 103900 finding private respondents Antonio C. Cañete and Margarito S. Auguis (private respondents) to have been

[1] *Rollo*, pp. 3-16.
[2] Penned by Associate Justice Amelita G. Tolentino with Associate Justices Pampio A. Abarintos and Marlene B. Gonzales-Sison, concurring, *id.* at 18-28.
[3] *Id.* at 30-31.

constructively dismissed; and denying petitioners' motion for reconsideration, respectively.

Antecedents

Petitioner Reliable Industrial Commercial Security Agency, Inc. (RICSA) hired respondents Cañete and Auguis as security guards in 1994 and 1997, respectively, and assigned them to their posts at Pier 12, North Harbor, Tondo, Manila.[4]

In March and April 2006, private respondents filed separate complaints against RICSA and its President, petitioner Ronald P. Mustard, for non-payment of minimum wage, overtime, holiday, and rest day pays. On June 21, 2006, just a few days after the cases were submitted for resolution, petitioners suddenly reassigned respondent Cañete to C4 Shell, and private respondent Auguis, to CY-08. Petitioners then allegedly barred them from reporting to Pier 12. Hence, on June 22, 2006, private respondents filed another complaint against petitioners, this time for constructive dismissal.[5]

Private respondents essentially alleged that their sudden transfer was done in bad faith and a clear act of retaliation because of the complaints for money claims they had earlier filed against petitioners. They also claimed that their transfers were unreasonable because it would have burdened them with additional transportation expenses. Under these circumstances, petitioners were virtually forcing them to resign.

Petitioners, on the other hand, faulted private respondents for deliberately ignoring their assignments and maliciously refusing to report for work. They asserted that private respondents' transfers were part of the company's policy of periodically reshuffling guarding posts.[6]

Meantime, the complaints for money claims eventually got dismissed on ground of prescription.[7] The National Labor Relations Commission (NLRC) affirmed through Resolution[8] dated September 26, 2009.

The Labor Arbiter's Ruling

Back to the complaint for constructive dismissal, the labor arbiter, by Decision[9] dated January 24, 2007, dismissed the complaint upon his finding that the transfers were a valid exercise of management prerogative. He agreed with petitioners that the transfer was necessary to prevent their employees from fraternizing with the company's clientele. The transfer did not result in

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[4] *Id.* at 62.
[5] *Id.* at 50-53.
[6] *Id.* at 40-44.
[7] *Id.* at 33.
[8] Penned by Presiding Commissioner Raul T. Aquino, with Commissioners Victoriano R. Calaycay and Angelita A. Gacutan, concurring, *id.* at 33-38.
[9] Penned by Labor Arbiter Donato G. Quinto, Jr., *id.* at 39-48.

demotion in rank or diminution of salary. Hence, private respondents had no valid reason to refuse their transfers.

The Rulings of the NLRC

By Resolution[10] dated August 17, 2007, the NLRC affirmed. It ruled that petitioners sufficiently established that the employees' transfers were part of their operational routine. Too, the transfers did not prejudice private respondents who suffered no diminution in rank, salary, or benefits. Although respondents Cañete and Auguis were assigned at Pier 12 for twelve (12) years and nine (9) years, respectively, they did not acquire any vested right to their post.[11]

The NLRC denied private respondents' motion for reconsideration on October 23, 2007.[12]

The Dispositions of the Court of Appeals

By Decision[13] dated March 23, 2009 in CA-G.R. SP No. 103900, the Court of Appeals reversed.[14]

At the outset, it noted that private respondents' petition for *certiorari* suffered from procedural infirmities.[15] Specifically, it failed to allege that: (a) the writ was directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions; (b) such tribunal, board, or officer had acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to excess or lack of jurisdiction; and (c) there was no appeal or any plain, speedy and adequate remedy in the ordinary course of law. The Court of Appeals, nevertheless, brushed these defects aside in the higher interest of justice, placing emphasis on social justice in labor cases.[16]

On the substantive issues, the Court of Appeals acknowledged that it was indeed within the employer's prerogative to transfer or reassign employees to meet business requirements. Although, this prerogative would only be respected so long as it conforms with limitations provided by law, collective bargaining agreements, and general principles of fair play and justice.[17] Applying this principle, the Court of Appeals ruled that the transfers

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[10] Penned by Commissioner Gregorio O. Bilog, III, and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo, *id.* at 87-91.

[11] *Id.* at 89-90.

[12] *Id.* at 69-70.

[13] *Id.* at 18-28.

[14] *Id.* at 27.

[15] Petitioner must allege in his petition and has the burden of establishing facts to show that any other existing remedy is not speedy or adequate and that (a) the writ is directed against a tribunal, board or officer exercising judicial or quasi-judicial functions; (b) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to excess of lack of jurisdiction; and (c) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law; *id.* at 22, citing *Abedes v. Court of Appeals*, 562 Phil. 262, 276 (2007).

[16] *Rollo*, pp. 22-23.

[17] *Id.* at 24.

were highly suspect, nay, illegal considering the timing and the circumstances under which petitioners supposedly exercised their management prerogative.[18] Consequently, it found that private respondents were constructively dismissed.

In view of the strained relations between the parties, however, the Court of Appeals deemed it proper to grant separation pay, in lieu of reinstatement in addition to their backwages.[19] Notably though, the *fallo* of the decision does not explicitly bear the monetary awards.

The Court of Appeals denied petitioners' motion for reconsideration by Resolution[20] dated November 27, 2009.

The Present Petition

Petitioners now fault the Court of Appeals with grave abuse of discretion amounting to lack or excess of jurisdiction when it: (a) gave due course to private respondents' petition for *certiorari* despite its procedural defects; (b) ruled that private respondents were constructively dismissed; and (c) ordered them to pay full backwages and separation pay to private respondents.[21]

First. Private respondents' petition for *certiorari* before the Court of Appeals lacked the necessary allegations which would have vested the appellate court with jurisdiction over the petition.[22] Though they (petitioners) acknowledge the rule on liberality in labor cases, the Rules of Court should not be completely disregarded.[23]

Second. Private respondents' transfers were not done in bad faith. To be sure, bad faith is never presumed and must be established by clear and convincing evidence which is absent here. The Court of Appeals, thus, had no basis in characterizing the transfers as a retaliatory measure against private respondents.[24]

At any rate, the inconvenience and increase in transportation expenses private respondents allegedly stood to suffer could hardly justify their refusal to report to their new assignments.[25] It amounted to insubordination which is a valid ground for dismissal.[26]

Although private respondents Cañete and Auguis had been assigned at Pier 12 for twelve (12) years and nine (9) years, respectively, they do not have

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[18] *Id.* at 24-26.
[19] *Id.* at 27.
[20] *Id.* at 30-31.
[21] *Id.* at 3-16.
[22] *Id.* at 9.
[23] *Id.*
[24] *Id.* at 10-11.
[25] Citing *Allied Banking Corp. v. Court of Appeals*, 461 Phil. 517, 534 (2003).
[26] *Rollo*, p. 12.

any vested right over their former position. In other words, the reassignments or transfers could not be deemed a circumvention of their right to security of tenure.[27]

Finally. Sans any illegal or constructive dismissal to speak of, the award of backwages and separation pay in lieu of reinstatement had no basis.[28]

In their *Comment*[29] dated March 30, 2010, private respondents riposte that the present petition should be dismissed outright – for petitioners availed of the wrong remedy of *certiorari* under Rule 65 of the Rules of Court when it should have filed a petition for review under Rule 45 of the same rules instead.

Through their *Reply* dated November 30, 2010, petitioners insist that *certiorari* is the proper remedy here since the Court of Appeals acted in grave abuse of discretion, and considering that they are not only raising pure questions of law, but questions of fact, as well.[30]

Core Issues

1. Did petitioners avail of the proper remedy in assailing the dispositions of the Court of Appeals?

2. Were private respondents constructively dismissed?

Ruling

Petitioners availed of the wrong remedy

The writ of *certiorari* is a remedy to keep lower courts and tribunals within the bounds of their jurisdiction. It is not issued to correct every error that may have been committed by lower courts and tribunals but only to prevent the latter from acting in grave abuse of discretion.[31]

The requirements for invoking the Court's power of *certiorari* are embodied in Rule 65 of the Rules of Court. Section 1 thereof pertinently states:

> Section 1. Petition for *certiorari*. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, **and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law,** a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or

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[27] *Id.* at 13.
[28] *Id.* at 13-14.
[29] *Id.* at 262-265.
[30] *Id.* at 273-276.
[31] See *Delos Santos v. Metrobank*, 698 Phil. 1, 14 (2012).

> modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. (emphasis added)
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> x x x x

Verily, the writ requires that there be no appeal or other plain, speedy, and adequate remedy available to correct the error. Thus, *certiorari* may not be issued if the error can be the subject of an ordinary appeal.

Here, petitioners resorted to *certiorari*, by alleging that the Court of Appeals acted in grave abuse of discretion when it rendered the rulings against them. Yet, a plain, speedy, and adequate remedy was still available to petitioners for purposes of challenging the dispositions of the Court of Appeals – a petition for review on *certiorari* under Rule 45 of the Rules of Court, thus:

> Section 1. Filing of petition with Supreme Court. — A **party desiring to appeal** by *certiorari* **from a judgment or final order or resolution of the Court of Appeals**, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth. (emphasis added)

Petitioners' claim - that an appeal is improper here as they raised mixed questions of fact and law, does not convince. For it is obvious in petitioners' pleadings that they are, in reality, simply asking for a review of the dispositions of the Court of Appeals.

At any rate, petitioners have not offered any cogent reason why they opted to forego the available remedy under Rule 45 and pursue a *certiorari* petition in lieu thereof. On this score, the Court is convinced that petitioners availed of a *certiorari* petition precisely to cloak its lost remedy.

Notably, the present petition was filed on February 2, 2010 or fifty-seven (57) days after petitioners received the resolution denying their motion for reconsideration on December 7, 2009. Surely, the period to file an appeal had long expired by then. But we have long settled that *certiorari* is not a substitute for a lapsed or lost appeal – and when an appeal is available, certiorari will not prosper, even if the ground to be alleged is grave abuse of discretion.[32]

Besides, an improper remedy would not prevent an adverse ruling from attaining finality. Once a ruling has lapsed into finality, it may no longer be modified in any respect, even if the modification is meant to correct an erroneous conclusion of fact or law.[33] In other words, petitioners' decision to resort to *certiorari* instead of an ordinary appeal allowed the dispositions below to lapse into finality, precluding us from performing a review thereof.

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[32] *Sps. Dycoco v. CA*, 715 Phil 550, 561 (2013).
[33] *One Shipping Corp. v. Peñafiel*, 751 Phil. 204, 211 (2015).

Yet the Court must keep stock of the principle that in labor cases, rules of procedure should not be applied in a very rigid and technical sense; they are mere tools designed to facilitate the attainment of justice. Where their strict application would result in the frustration rather than promotion of substantial justice, technicalities must be avoided.[34] In other words, where the ends of substantial justice shall be better served, the application of technical rules of procedure may be relaxed.[35]

Here, the Court deems it necessary to resolve the case on the merits despite petitioners' procedural lapses, considering that the *fallo* of the decision of the Court of Appeals was patently deficient. While it set aside the rulings of the NLRC, it did not specify the monetary awards private respondents were supposed to receive, as well as who among petitioners would be liable therefor.

It was incumbent upon the Court of Appeals to render a categorical ruling on these matters for a complete disposition of the case. To be sure, private respondents lost their cases before the labor arbiter and the NLRC. Thus, when the Court of Appeals reversed, there was no ruling in favor of private respondents which could have been reinstated. Private respondents were then left with a paper victory which they could not possibly execute.

Another. It is quite unfortunate that the present petition has languished in our dockets for about eleven (11) years. Thus, the Court owes it to the parties to issue a definitive ruling in the present petition.

All told, the Court resolves to accord petitioners the same leniency that the Court of Appeals extended to respondents and thus proceeds to resolve the case on the merits.

Respondents were constructively dismissed

The Court defined constructive dismissal in ***Gan v. Galderma Philippines, Inc.***,[36] thus:

> To begin with, constructive dismissal is defined as **quitting or cessation of work because continued employment is rendered** impossible, **unreasonable or unlikely**; when there is a demotion in rank or a diminution of pay and other benefits. It exists if **an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment.** x x x The test of constructive dismissal is **whether a reasonable person in the employee's position would have felt compelled to give up his employment/position under the circumstances.** (Emphases and underscoring supplied)

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[34] *Millennium Erectors Corp. v. Magallanes*, 649 Phil. 199, 204 (2010), citing *Tres Reyes v. Maxim's Tea House*, 446 Phil. 388, 400 (2003).

[35] *Id.*

[36] 701 Phil. 612, 638-639 (2013).

Here, private respondents filed a complaint against petitioners for constructive dismissal, claiming that their transfers were done in bad faith. Petitioners, on the other hand, maintained that transferring employees fell squarely within the ambit of management prerogative.

We rule for private respondents.

Management prerogative is the right of an employer to regulate all aspects of employment, including work assignment, working methods, processes to be followed, working regulations, work supervision, lay-off of workers and the discipline, dismissal and recall of workers.[37] This also includes the prerogative to transfer an employee from one office to another within the business establishment. This is, after all, a privilege inherent in the employer's right to control and manage its enterprise effectively.[38]

Like all rights, however, management prerogative has certain limits; it cannot be exercised with unbridled discretion. For instance, the managerial prerogative to transfer personnel must not result in the demotion in rank or diminution of the salary, benefits, and other privileges of said personnel. Too, it must be exercised without grave abuse of discretion and with due observance of the basic elements of justice and fair play. It cannot be over-emphasized that the right to transfer should not be confused with the manner in which that right must be exercised. Surely, it cannot be used as a subterfuge by the employer to rid itself of an undesirable worker.[39] ***Philippine Industrial Security Agency Corporation v. Aguinaldo***[40] elucidates:

> While it is true that an employer is free to regulate, according to his own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place, and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, layoff of workers and the discipline, dismissal and recall of workers, and this right to transfer employees forms part of management prerogatives, **the employee's transfer should not be unreasonable, nor inconvenient, nor prejudicial to him. It should not involve a demotion in rank, or diminution of his salaries, benefits, and other privileges, as to constitute constructive dismissal.** (emphasis added)

Rural Bank of Cantilan v. Julve[41] also instructs:

> Concerning the transfer of employees, these are the following jurisprudential guidelines: (a) a transfer is a movement from one position to another of equivalent rank, level or salary without break in the service or a lateral movement from one position to another of equivalent rank or salary; (b) the employer has the inherent right to transfer or reassign an employee for legitimate business purposes; (c) **a transfer becomes unlawful where it is motivated by discrimination or bad faith or is effected as a form of**

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[37] See *St. Luke's Medical Center, Inc. v. Sanchez*, 755 Phil. 910, 921 (2015).
[38] *Unirock Corporation v. CA*, G.R. No. 192113, September 7, 2020.
[39] *Meatworld International, Inc. v. Hechanova*, 820 Phil. 275, 290 (2017).
[40] 499 Phil. 215, 223 (2005).
[41] 545 Phil. 619, 625 (2007).

> **punishment or is a demotion without sufficient cause;** (d) the employer must be able to show that the transfer is not unreasonable, inconvenient, or prejudicial to the employee. (emphasis added)

Here, petitioner RICSA unfairly wielded its prerogative when it transferred respondents Cañete and Auguis from Pier 12 to C4 Shell and CY-08, respectively. Though said transfers did not result in the reduction of private respondents' salaries, duties, or responsibilities, the other circumstances surrounding the transfers reveal that the same were implemented as a form of punishment.

To recall, it was not long before private respondents' transfers when they filed separate complaints against petitioners for non-payment of minimum wage, overtime, holiday, and rest day pays. In fact, it had only been days after these cases were submitted for resolution when private respondents got reassigned. Prior to that, they were never given any assignment throughout their nine (9) years and twelve (12) years of service to RICSA other than to guard Pier 12.

To our mind, the only reason the *status quo* had shifted was because private respondents had earlier sued petitioners for money claims. We agree with the Court of Appeals that the transfers were a mere retaliatory reflex on the part of petitioner RICSA, albeit one that would bear heavily not only on private respondents' work but also their financial standing. Certainly, the difference of even a few pesos in the daily transportation expenses of a laborer could mean a cut on their budget for food or other daily essentials.

Petitioners nevertheless deny the so called revenge plot and counter that the transfers were consistent with its standard procedure of periodic reshuffling or reassignment of guarding posts. They insist that the transfers were reasonable because the same were done merely to prevent fraternization with its clientele.

We cannot agree.

To reiterate, since the employment of respondents Cañete and Auguis in 1994 and 1997, respectively, they were only assigned at Pier 12 and nowhere else. Now, if the transfer had truly been part of petitioners' standard procedure to rotate its security guards to "avoid fraternization," then why did it take them too long to reassign private respondents elsewhere? Why do so only after nine (9) and twelve (12) years, and right after private respondents had sued them for money claims?

In any event, petitioners utterly failed to adduce even a single piece of evidence to prove the existence of this supposed "standard procedure" or even provide details regarding the number of days, months, or years each guard may stay in one location before they must be transferred. Too, there is a dearth of evidence showing that RICSA's other security guards, not just private respondents, have been periodically reshuffled from one location to another

pursuant to this alleged policy. Petitioners could have easily provided copies of contracts, logbooks, or memoranda showing that their employee security guards were routinely being transferred to different posts, but they did not. Instead, petitioners merely insisted on their claim that this policy was in effect.

In ***ICT Marketing, Services, Inc. v. Sales***,[42] the Court found that petitioner therein acted in bad faith and with discrimination, insensibility, and disdain in reassigning respondent Mariphil Sales to a different post. For the evidence clearly established that the transfer was effected as a form of punishment against Sales for raising a valid grievance related to her work. Thus, the transfer was deemed unreasonable and tantamount to constructive dismissal.

Too, in ***Veterans Security Agency, Inc. v. Gonzalvo, Jr.***,[43] the Court ruled in favor of respondent Felipe Gonzalvo, Jr., a security guard who bravely reported his employer's failure to remit the Social Security System premiums of its employees. After he made the report, petitioner Veterans Security transferred him to different stations because he was no longer in their good graces. It was constructive dismissal, plain and simple.

Following ***ICT*** and ***Veterans***, we find that private respondents, too, were constructively dismissed.

Monetary Awards

In cases of unlawful termination, the employee who was unjustly dismissed from work is entitled to reinstatement and full backwages.[44] But jurisprudence allows payment of separation pay if reinstatement is no longer feasible. The most common reason for payment of separation pay is when the *relation* between the employer and employee has already been strained. Separation pay is also available when reinstatement is no longer practical or in the best interest of the parties.[45]

Here, the Court of Appeals noted that private respondents no longer desired to be reinstated. With the strained relation between the parties rendering reinstatement unlikely or impractical, separation pay was properly awarded to private respondents.

The monetary award of backwages and separation pay shall earn six percent (6%) interest *per annum* from finality of this Decision until fully paid.[46]

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[42] 769 Phil. 498, 519 (2015).
[43] 514 Phil. 488, 494 (2005).
[44] Article 279. Security of Tenure. - In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.
[45] See *Leopard Security and Investigation Agency v. Quitoy*, 704 Phil. 449, 460 (2013).
[46] Central Bank Circular No. 799, s. 2013; *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).

Only petitioner RICSA is liable to private respondents

As a general rule, corporate officers are not solidarily liable with the corporation for its obligations because the corporation is vested with a personality separate and distinct from those of the persons composing it. To hold a director or officer personally liable for corporate obligations, however, two requisites must concur: (1) the director or officer assented to the patently unlawful acts of the corporation, or that the director or officer was guilty of gross negligence or bad faith; and (2) there must be proof that the director or officer acted in bad faith.[47]

Here, although the allegation of constructive dismissal was duly substantiated, petitioner Mustard's participation in the transfer was not specifically alleged, much less, proven. To be sure, private respondents merely impleaded Mustard and made a general allegation of bad faith on his part – nothing more. Bad faith, however, is never presumed and must be proved by clear and convincing evidence[48] which is glaringly absent here. As such, the Court cannot hold petitioner Mustard solidarily liable with RICSA.

ACCORDINGLY, the petition is **DISMISSED.** The Decision dated March 23, 2009 and Resolution dated November 27, 2009 of the Court of Appeals in CA-G.R. SP No. 103900 are **AFFIRMED with MODIFICATION.**

Private respondents **ANTONIO CAÑETE** and **MARGARITO AUGUIS** are declared **CONSTRUCTIVELY DISMISSED** and petitioner **RELIABLE INDUSTRIAL COMMERCIAL SECURITY AGENCY, INC.** is **ORDERED** to **PAY** private respondents the following:

1. **BACKWAGES** computed from their constructive dismissal on June 21, 2006 until finality of this Decision; and

2. **SEPARATION PAY** equivalent to one (1) month salary for every year of service based on their respective dates of hiring until finality of this Decision.

These monetary amounts shall earn six percent (6%) interest *per annum* from finality of this Decision until fully paid.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

[47] *Lozada v. Mendoza*, 797 Phil. 168, 175 (2016).
[48] *Gatmaitan v. Dr. Gonzales*, 525 Phil. 658, 671 (2006).

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice
Chairperson

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

CERTIFICATION

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

ALEXANDER G. GESMUNDO
Chief Justice