



Republic of the Philippines  
 Supreme Court  
 Baguio City

SECOND DIVISION

**LITEX GLASS AND ALUMINUM  
 SUPPLY AND/OR RONALD  
 ONG- SITCO,**

*Petitioners,*

- versus -

**DOMINADOR B. SANCHEZ,**

*Respondent.*

**G.R. No. 198465**

Present:

CARPIO, *Chairperson,*  
 BRION,  
 DEL CASTILLO,  
 MENDOZA, *and*  
 LEONEN, *JJ.*

Promulgated:

22 APR 2015

*Alfonso C. Peralta*

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**DECISION**

**DEL CASTILLO, J.:**

Before us is a Petition for Review on *Certiorari*<sup>1</sup> seeking to set aside the May 11, 2011 Decision<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 113840, which dismissed the petition for *certiorari* filed therewith and affirmed the October 30, 2009<sup>3</sup> and February 18, 2010<sup>4</sup> Resolutions of the National Labor Relations Commission (NLRC), which in turn, affirmed *in toto* the June 18, 2009 Decision<sup>5</sup> of the Labor Arbiter declaring respondent Dominador B. Sanchez (Sanchez) to have been illegally dismissed from employment by petitioners Litex Glass and Aluminum Supply (Litex) and Ronald Ong-Sitco (Ong-Sitco). Likewise assailed is the August 31, 2011 Resolution<sup>6</sup> of the CA denying petitioners' Motion for Reconsideration.<sup>7</sup>

*Alfonso C. Peralta*

<sup>1</sup> *Rollo*, pp. 9-42.  
<sup>2</sup> *CA rollo*, pp. 211-225; penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Josefina Guevara-Salonga and Franchito N. Diamante.  
<sup>3</sup> *Id.* at 20-33; penned by Commissioner Gregorio O. Bilog III and concurred in by Presiding Commissioner Alex A. Lopez and Commissioner Pablo C. Espiritu, Jr.  
<sup>4</sup> *Id.* at 36-37.  
<sup>5</sup> *Id.* at 108-122; penned by Labor Arbiter Thomas T. Que, Jr.  
<sup>6</sup> *Id.* at 248-249; penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Ricardo R. Rosario and Franchito N. Diamante.  
<sup>7</sup> *Id.* at 226-239.

### *Antecedent Facts*

This case arose from a Complaint<sup>8</sup> for illegal dismissal and non-payment of holiday pay, premium for holiday pay, service incentive leave pay and attorney's fees filed by Sanchez against petitioners on February 18, 2009 before the Labor Arbiter, docketed as NLRC NCR Case No. 02-02975-09.

Sanchez alleged that since 1994, he was employed as driver and aluminum installer in several companies owned and managed by Ong-Sitco, the last of which was with Litex. Since February 1996, Ong-Sitco had been remitting his Social Security System (SSS) monthly contributions.<sup>9</sup> Sanchez averred that he has no record of any work related offense for which he has been reprimanded, suspended or warned and that for the past 15 years, he has been diligently serving his employer. He was thus surprised when on December 23, 2008, Ong-Sitco and his wife scolded and threw insulting words and invectives upon him and then ordered him to go on indefinite leave. Due to the incident, he decided to just leave the work premises with the hope that the animosity between him and his employer would eventually subside. On December 28, 2008, he went back to the office to talk to Ong-Sitco, but the latter just ignored him. He again returned on January 2, 2009 to purportedly discuss his employment status, but Ong-Sitco was again unwilling to talk to him. The same thing happened after he went back a week later. These, thus, led Sanchez to file a case for illegal dismissal and non-payment of benefits against petitioners.

Subsequent to the filing of the said complaint, Sanchez received two memorandum-letters from petitioners. The first one was dated January 7, 2009<sup>10</sup> but mailed on February 23, 2009,<sup>11</sup> and received by Sanchez on February 26, 2009. It contained a directive for Sanchez to report for work and to explain his continued absence from December 22, 2008 to January 7, 2009, after he was allegedly given verbal warning for committing the following infractions: 1) going home early without justification on December 3, 2008; 2) exhibiting erratic behavior and threatening to file a case against petitioners after being summoned to explain his unjustified leave from work on December 9, 2008; and, 3) unauthorized use of company vehicle for personal benefit on December 20, 2008. The second memorandum-letter<sup>12</sup> dated January 22, 2009 which was sent on March 10, 2009,<sup>13</sup> and received by Sanchez on March 22, 2009, contained a warning that his refusal to follow the earlier directive to report and explain his continued absence within 24 hours would constitute abandonment of work on his part.

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<sup>8</sup> Id. at 39-41.

<sup>9</sup> Id. at 57 and 107.

<sup>10</sup> Id. at 58.

<sup>11</sup> Id. at 59.

<sup>12</sup> Id. at 60.

<sup>13</sup> Id. at 61.

Sanchez's legal counsel, Atty. Osias M. Merioles, Jr., on the other hand, wrote petitioners a letter<sup>14</sup> dated March 20, 2009 informing them that his client would not report for work as the first memorandum-letter was a mere afterthought to cover up their act of illegal termination.

Petitioners, on the other hand, negated all of Sanchez's claims. They denied having employed him in 1994 since, according to them, Litex was only registered on April 5, 2002.<sup>15</sup> Petitioners also denied having dismissed Sanchez. They averred that it was Sanchez who abandoned his job by not reporting for work.

Petitioners then presented their own version of the facts. They averred that based on company records, the January 7, 2009 memorandum-letter was sent on January 8, 2009 and not on February 23, 2009 to Sanchez's last known address. The same, however, was returned to sender. On the other hand, the January 22, 2009 memorandum-letter was sent to Sanchez on January 23, 2009 and not on March 10, 2009. These memorandum-letters are not termination letters as claimed by Sanchez, but notices for him to report for work and to explain several infractions that he committed on December 3, 9 and 20, 2009. But instead of complying, Sanchez refused to go to work as evidenced by his counsel's letter. To petitioners, this intimated Sanchez's lack of interest to work. Petitioners further averred that they have no reason to terminate Sanchez especially since the latter has pending obligations with the company consisting of ₱39,449.20 worth of materials and money amounting to ₱6,500.00.

### ***Ruling of the Labor Arbiter***

In a Decision<sup>16</sup> dated June 18, 2009, the Labor Arbiter declared Sanchez to have been illegally dismissed by petitioners. This was after he found Sanchez's version of facts more credible. He observed that the original copies of the registry receipts which were attached to the envelopes of the January 7 and January 22, 2009 memorandum-letters show that they were mailed only on February 23, 2009 and March 10, 2009, respectively, or after the filing of the complaint for illegal dismissal on February 18, 2009. Thus, said memorandum-letters were made and sent by petitioners "to evade the consequences of illegal termination by showing seeming compliance with the notice requirement and likewise to demonstrate the absence of dismissal."<sup>17</sup> Moreover, the Labor Arbiter pointed out that the alleged infractions imputed against Sanchez are not sufficient grounds to warrant his dismissal.

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<sup>14</sup> Id. at 64.

<sup>15</sup> See Litex Glass and Aluminum Supply's Certificate of Registration of Business Name issued by the Department of Trade and Industry on April 5, 2002, id. at 71.

<sup>16</sup> Id. at 108-122.

<sup>17</sup> Id. at 115-116.

For having been illegally dismissed, Sanchez was awarded separation pay computed from the date of hiring in 1994 up to the finality of the Decision, and full backwages computed from the date of dismissal also up to the finality of the Decision.<sup>18</sup> He was also granted his claims for holiday pay, service incentive leave pay and attorney's fees. Thus:

*WHEREFORE*, premises considered, judgment is hereby rendered finding Complainant to have been illegally dismissed and, in conformity therewith, holding Respondents jointly and severally liable to pay Complainant his separation pay and full backwages counted from date of dismissal until finality of this Decision, including the awards [for] holiday pay and service incentive leave pay, as currently contained in Computation and Examination Unit's schedule of computation herein adopted and marked as Annex "A", plus attorney's fee equivalent to 10% of the judgment award.

All other claims are dismissed for lack of merit.

SO ORDERED.<sup>19</sup>

### ***Ruling of the National Labor Relations Commission***

On appeal with the NLRC, petitioners averred that the Labor Arbiter erred in: (1) not ruling that Sanchez abandoned his work; (2) awarding separation pay even if not sought in the complaint and despite the absence of strained relations; (3) computing separation pay based on Sanchez's length of service of 15 years despite the fact that he was only hired in 2002; (4) not ruling on Sanchez' indebtedness to petitioners in the total sum of ₱45,494.20; and, (5) awarding attorney's fees despite the absence of bad faith on their part.

In a Resolution<sup>20</sup> dated October 30, 2009, the NLRC dismissed the appeal and affirmed the Labor Arbiter's judgment. It: (1) ruled that Sanchez cannot be said to have abandoned his job as there is no showing of an intention to resign or forego with his employment; (2) upheld the grant of separation pay and other monetary awards; and, (3) sustained the Labor Arbiter in not deducting from Sanchez's monetary awards his alleged obligations to petitioners on the ground that the said liabilities were not fully substantiated and that they arose from a different contractual relation.

Petitioners filed a motion for reconsideration reiterating their previous arguments and adding that the award of backwages should be computed only until March 20, 2009 when Sanchez manifested his refusal to report for work. This motion was, however, denied in the NLRC Resolution<sup>21</sup> of February 18, 2010.

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<sup>18</sup> See Re: Computation of Monetary Awards As Per Decision of L.A. Thomas T. Que, Jr., id. at 123.

<sup>19</sup> Id. at 121-122.

<sup>20</sup> Id. at 20-33.

<sup>21</sup> Id. at 36-37.

Petitioners' next recourse was a Petition for *Certiorari*<sup>22</sup> with the CA.

### ***Ruling of the Court of Appeals***

In a Decision<sup>23</sup> dated May 11, 2011, the CA dismissed the Petition for *Certiorari* and affirmed the afore-mentioned NLRC Resolutions. It agreed with the findings of the labor tribunals that: (1) Sanchez was dismissed without valid grounds; (2) he is not guilty of abandonment of work as he immediately filed a case after his efforts to return to work proved futile; (3) the memorandum-letters were mere afterthought as to give semblance of validity to the dismissal, they having been sent after the complaint was filed; (4) there was already antagonism between the parties that warranted the award of separation pay; (5) Sanchez was under the employ of Ong-Sitco's several companies for the past 15 years; (6) the alleged accountabilities of Sanchez were not fully substantiated and cannot be offset against his monetary awards since they sprung from a different contractual relation; (7) Sanchez is entitled to attorney's fees since he was constrained to litigate and incur expenses to protect his interests; and, (8) the award of backwages should be computed from the date of dismissal on December 23, 2008 until finality of the judgment and not only until March 20, 2009 because Sanchez's refusal to return to work was justified, it being predicated on the reasonable belief that compliance with petitioners' memorandum-letters would only serve the latter's apparent purpose of evading their responsibility in illegally terminating him.

Petitioners filed a Motion for Reconsideration which was likewise denied in the CA Resolution<sup>24</sup> of August 31, 2011.

Hence, this Petition.

### **Issues**

WHETHER X X X IT IS MISLEADING ON THE PART OF THE PRIVATE RESPONDENT TO PRAY FOR REINSTATEMENT WHEN IN FACT IT IS HIS POSITION THAT HE WILL NOT REPORT FOR WORK ANYMORE.

WHETHER X X X THE AWARD OF SEPARATION PAY MAY BE SUSTAINED DESPITE THE FACT THAT THE SAME IS NEITHER PRAYED FOR BY THE PRIVATE RESPONDENT [NOR] SUPPORTED BY ALLEGATIONS OF STRAINED RELATIONSHIP IN THE PLEADINGS SUBMITTED BY THE PARTIES NOR WAS THERE ANY ALLEGATION THERETO IN THE QUESTIONED DECISION ITSELF.

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<sup>22</sup> Id. at 3-18.

<sup>23</sup> Id. at 211-225.

<sup>24</sup> Id. at 248-249.

WHETHER X X X MERE SELF-SERVING ALLEGATIONS OF THE PRIVATE RESPONDENT [ARE] SUFFICIENT TO PROVE THE ALLEGED DISMISSAL.

WHETHER X X X PRIVATE RESPONDENT IS ENTITLED TO THE PAYMENT OF HIS MONEY CLAIMS.<sup>25</sup>

Petitioners maintain that Sanchez is not entitled to the monetary awards as no dismissal, in fact, took place. In particular, they question the award of separation pay since it was not prayed for in the complaint, never discussed or raised in the proceedings before the Labor Arbiter, and no strained relations exists between them and Sanchez. Besides, even assuming that Sanchez is entitled to separation pay, petitioners contend that the computation thereof should only be from 2002 when Sanchez commenced working for them and not in 1994. Moreover, the award of attorney's fees is improper since there is no bad faith on their part.

### **Our Ruling**

The Petition is partly meritorious.

*Sanchez did not abandon his work but was illegally dismissed.*

Seeking to absolve themselves from the charge of illegal dismissal by denying the fact of dismissal, petitioners contend that Sanchez abandoned his job. To support this, they highlighted the fact that they sent him "show-cause" letters which were made in good faith, in order to give him an opportunity to answer the infractions imputed against him and to likewise give notice for him to return to work. They insist that the two memorandum-letters were mailed on January 8 and 23, 2009, respectively, or before the filing of the complaint, and that said letters were presumed to have been received by Sanchez in the regular course of mail absent any proof to the contrary.

Suffice it to say, however, that the issue of whether Sanchez was dismissed from employment is essentially a question of fact<sup>26</sup> which cannot be raised in this petition for review on *certiorari*. Besides, we see no compelling reason to deviate from the finding of fact of the CA, which is in absolute agreement with those of the NLRC and the Labor Arbiter, that Sanchez was dismissed from employment. "[F]actual findings of agencies exercising quasi-judicial functions are accorded not only respect but even finality"<sup>27</sup> by this Court when supported by substantial

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<sup>25</sup> *Rollo*, p. 18.

<sup>26</sup> *Building Care Corporation v. National Labor Relations Commission*, 335 Phil. 1131, 1138 (1997).

<sup>27</sup> *Atlas Farms, Inc. v. National Labor Relations Commission*, 440 Phil. 620, 630 (2002).

evidence and especially when affirmed by the CA.<sup>28</sup> Here, the Labor Arbiter, the NLRC and the CA were unanimous in finding Sanchez's narration of the circumstances surrounding his illegal dismissal credible.

Moreover, this Court is not inclined to disturb findings which conform to evidentiary facts. Aside from the fact that Ong-Sitco did not dispute Sanchez's claim that the two of them had an altercation on December 23, 2008, the former also admitted that the latter subsequently went back to his office to clear his employment status but was ignored by him. After two similar attempts from Sanchez, Ong-Sitco still refused to entertain Sanchez's requests and queries regarding his employment status. It was only in the two memorandum-letters dated January 7 and January 22, 2009, which were likewise unanimously found by the labor tribunals and the CA to have been sent to Sanchez after the filing of the complaint, that petitioners warned Sanchez of his continued absence and directed him to report for work to explain said absences and answer the infractions he allegedly committed.

From the above factual scenario, the Court is not convinced that Sanchez abandoned his work. To constitute abandonment, it is essential that an employee failed to report for work without any valid and justifiable reason and that he had a clear intention to sever the employment relationship by some overt act.<sup>29</sup> Mere failure to report for work after notice to return does not constitute abandonment.<sup>30</sup> As mentioned, Sanchez reported back to Ong-Sitco several times to ask about his employment status but was not entertained. Oddly, while Ong-Sitco did not deny this, he never bothered to explain why during these instances, he did not warn Sanchez about his continued absence or ask him to return to work, if only to bolster the claim that he was not dismissed. Instead, Ong-Sitco just ignored him and this, under the circumstances, only shows his intention not to retain him. This is further bolstered by the fact, as shown by the records, that the two memorandum-letters were sent to Sanchez after he filed a complaint against petitioners. Clearly, Sanchez cannot be said to have unjustifiably refused to return to work. He cannot be faulted from reasonably concluding that the memorandum-letters were merely made in order to give semblance of validity to his termination. In addition and as aptly observed by the CA, Sanchez's immediate filing of the complaint is proof of his desire to return to work. It has been held that the filing of a complaint negates any intention of abandoning foregoing employment.<sup>31</sup>

Anent Sanchez' dismissal, the Court finds that there is no valid ground for the same. No substantial evidence but only mere allegations were proffered in

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<sup>28</sup> *NGEI Multi-Purpose Cooperative, Inc. v. Filipinas Palmoil Plantation, Inc.*, G.R. No. 184950, October 11, 2012, 684 SCRA 152, 163.

<sup>29</sup> *CRC Agricultural Trading v. National Labor Relations Commission*, 623 Phil. 789, 799 (2009); *Hantex Trading Co., Inc. v. Court of Appeals*, 438 Phil. 737, 745 (2002).

<sup>30</sup> *Samahan ng mga Manggagawa sa Bandolino v. National Labor Relations Commission*, 341 Phil. 635, 646 (1997).

<sup>31</sup> *Pentagon Steel Corporation v. Court of Appeals*, 608 Phil. 682, 696-697 (2009).

support of the claim that Sanchez committed infractions, to wit: 1) going home early without presenting any justification on December 3, 2008; 2) exhibiting erratic behavior and threatening to file a case against petitioners after being summoned to explain his unjustifiable leave from work on December 9, 2008; and 3) unauthorized use of company vehicle for personal benefit on December 20, 2008.

In view of the above discussion, the Court affirms the CA's finding that Sanchez was illegally dismissed. As such, he is entitled to reinstatement without loss of seniority rights, full backwages inclusive of allowances, and other benefits or their monetary equivalent, computed from the time compensation was withheld up to the time of actual reinstatement pursuant to Article 279<sup>32</sup> of the Labor Code, as amended by Republic Act No. 6715.

*The award of separation pay is proper. However, the computation of the same should be reckoned from April 2002.*

As stated, "an illegally dismissed employee is entitled to reinstatement as a matter of right."<sup>33</sup> But when an atmosphere of antipathy and antagonism has already strained the relations between the employer and employee, separation pay is to be awarded as reinstatement can no longer be equitably effected.<sup>34</sup>

We agree with the CA when it held that the Labor Arbiter's award of separation pay is an equitable disposition. Although petitioners correctly pointed out that separation pay was not prayed for in the complaint, Sanchez is deemed to have accepted the separation pay awarded by the Labor Arbiter since he never questioned the same. The Court has ruled that separation pay may be awarded if the employee decides not to be reinstated.<sup>35</sup> Besides, the altercation that transpired between Sanchez and Ong-Sitco is enough basis to conclude that there exists an apparent strained relationship between them. This strained relationship is also very evident from petitioners' refusal to retain Sanchez under their employ.<sup>36</sup> While petitioners contend that their act of sending Sanchez memorandum-letters directing him to report for work exhibits their willingness to retain him, the same hardly convinces. We have already concluded earlier that the said memorandum-

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<sup>32</sup> ART. 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. And 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.

<sup>33</sup> *Cabigting v. San Miguel Foods, Inc.*, 620 Phil. 14, 24 (2009).

<sup>34</sup> *Globe-Mackay Cable and Radio Corporation v. National Labor Relations Commission*, G.R. No. 82511, March 3, 1992, 206 SCRA 701, 709-710.

<sup>35</sup> *Martos v. New San Jose Builders, Inc.*, G.R. No. 192650, October 24, 2012, 684 SCRA 561, 578-579.

<sup>36</sup> *Congson v. National Labor Relations Commission*, 313 Phil. 69, 82 (1995), citing *Esmalin v. National Labor Relations Commission (3<sup>rd</sup> Division)*, 258 Phil. 335, 348 (1989).



letters were mere afterthought made only to cover-up petitioners' act of illegally dismissing Sanchez. For obvious reasons, they cannot be viewed as a sign of petitioners' sincere willingness to reinstate Sanchez. Further, even if the issue of strained relations was not raised in the proceedings before the Labor Arbiter, it was nonetheless discussed and argued by the parties in their respective pleadings submitted to the NLRC when the case was brought on appeal. Clearly, there is sufficient basis for the grant of separation pay in lieu of reinstatement in this case.

We, however, hold that the labor tribunals and the CA erred in reckoning the employment of Sanchez from 1994 for the purpose of computing his separation pay. In affirming the decision of the NLRC and the Labor Arbiter, the CA relied on the SSS Certification<sup>37</sup> and gave weight to Sanchez's claim that Ong-Sitco has been remitting his SSS contributions since 1996.

In *L.C. Ordoñez Construction v. Nicdao*,<sup>38</sup> the Court reiterated the basic rule on evidence that the burden of proof lies on the party who makes the allegation and must prove his claim by competent evidence. There, respondent Nicdao was claiming entitlement to separation pay and other employee benefits computed from 1985, the date of her alleged employment. The Court, however, denied her claim as she made inconsistent statements in her pleadings concerning her date of employment.

In this case, it is incumbent upon Sanchez to prove that he was in the employ of petitioners since 1994. Unfortunately, he failed to discharge this onus. The SSS Certification submitted merely states that his coverage under the SSS started in 1996 and that his latest employer as of the date of the issuance of the certification is Ong-Sitco. As correctly argued by petitioners, there is nothing in the said certification which shows that Sanchez was in the employ of petitioners since 1994 or even since 1996. Neither is there any other competent evidence presented to substantiate the claim that he worked in several companies owned and managed by Ong-Sitco since 1994.

Since the only persuasive evidence on record regarding Sanchez's date of employment with petitioners is the latter's admission that they employed him in April 2002, the date Litex was registered with the Department of Trade and Industry, Sanchez is deemed employed by petitioners beginning on such date. Hence, the reckoning point for the computation of the separation pay in lieu of reinstatement awarded to Sanchez shall be the year 2002 and not 1994.

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<sup>37</sup> CA rollo, p. 107.

<sup>38</sup> 528 Phil. 1124, 1133 (2006), citing *Rufina Patis Factory v. Alusitain*, 478 Phil. 544, 557 (2004).

*Attorney's fees was correctly awarded.*

We affirm the CA's award as well as its basis in granting attorney's fees in favor of Sanchez. "An award of attorney's fees is proper if one was forced to litigate and incur expenses to protect one's rights and interest by reason of an unjustified act or omission on the part of the party from whom the award is sought."<sup>39</sup> This is clearly obtaining in this case.

**WHEREFORE**, the Petition is **PARTLY GRANTED**. The assailed May 11, 2011 Decision and August 31, 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 113840, are **AFFIRMED with the modification** that petitioners Litex Glass and Aluminum Supply and/or Ronald Ong-Sitco are ordered to pay respondent Dominador B. Sanchez's separation pay computed at one-month pay for every year of service, with years of service reckoned from April 2002 until the finality of this Decision.

**SO ORDERED.**

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

WE CONCUR:

  
**ANTONIO T. CARPIO**  
*Associate Justice*  
*Chairperson*

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<sup>39</sup> *Maglasang v. Northwestern University, Inc.*, G.R. No. 188986, March 20, 2013, 694 SCRA 128, 140.

  
**ARTURO D. BRION**  
*Associate Justice*

  
**JOSE CATRAL MENDOZA**  
*Associate Justice*

  
**MARVIC M.V.F. LEONEN**  
*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.

  
**ANTONIO T. CARPIO**  
*Associate Justice*  
*Chairperson*



### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division 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.



MARIA LOURDES P. A. SERENO

*Chief Justice*

