



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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EN BANC

NATIONAL POWER CORPORATION,
 Petitioner,

G.R. No. 194529

Present:

BERSAMIN, C.J.,
 CARPIO,
 PERALTA,
 PERLAS-BERNABE,
 LEONEN,
 JARDELEZA,
 CAGUIOA,
 REYES, A., JR.,
 GESMUNDO,
 *REYES, J., JR.,
 HERNANDO,
 CARANDANG,
 LAZARO-JAVIER,
 INTING, and
 ZALAMEDA, JJ.

- versus -

FRAULEIN CABANBAN CABANAG and JESUS T. PANAL,
 Respondents.

Promulgated:

August 6, 2019

x-----x

DECISION

BERSAMIN, C.J.:

Under review is the decision promulgated on November 17, 2010,¹ whereby the Court of Appeals (CA) held the petitioner liable for illegal dismissal of the respondents, and ordered it to pay them backwages and other benefits corresponding to the period from March 1, 2003 until September 14, 2007, to wit:

WHEREFORE, the petition is **Granted**. The Decision dated March 30, 2007 of the Civil Service Commission is hereby **Modified**, in

* On leave.

¹ *Rollo*, pp. 46-54; penned by Associate Justice Noel G. Tijam, with Associate Justice Marlene Gonzales-Sison and Associate Justice Jane Aurora C. Lantion, concurring.

that the Petitioners were illegally dismissed as the NPB Resolutions Nos. 2002-124 and 2002-125 which were relied upon by the Respondent in their reorganization program were subsequently declared void by the Supreme Court. Petitioners are entitled to backwages and other benefits, from the date they were illegally dismissed up to September 14, 2007.

Antecedents

Respondents Fraulein C. Cabanag and Jesus T. Panal² were employed as Principal Chemists Analyst C at the petitioner's Palinpinon Geothermal Power Plant located at Puhagan, Valencia, Negros Oriental.³

On November 18, 2002, the National Power Board (NPB) of the petitioner passed NPB Resolution No. 2002-124⁴ and NPB Resolution No. 2002-125 pursuant to the provisions of Republic Act No. 9136 (*Electric Power Industry Reform Act* or EPIRA). NPB Resolution No. 2002-124 provided for the termination from employment of all the petitioner's personnel effective January 31, 2003, as well as their entitlement to separation benefits. NPB Resolution No. 2002-125 constituted a Transition Team to manage and implement the separation program. Inasmuch as the respondents were told that they could still apply for positions under the reorganized plantilla, they respectively applied for the positions of Principal Chemist Analyst C and Principal Chemist A.⁵

Being licensed Chemists, the respondents felt confident on being rehired considering that the other applicants were Chemical Engineers not qualified for the positions under the Civil Service Commission (CSC) Qualification Standards. Yet, on March 1, 2003, they had not been appointed, and that four of the appointees were Chemical Engineers.⁶

Both respondents sent to the petitioner a letter seeking a clarification. They thereby requested the re-evaluation of the selection and hiring processes under the New NPC Table of Organization (TO),⁷ insisting that they were more qualified than those eventually appointed because the 1997 Revised Quality Standards for the position of Principal Chemist specifically required a registered chemist, not a chemical engineer.⁸

Rodolfo C. Pacaña, then the Senior Plant Manager at the Palinpinon Geothermal Power Plant, replied that the decision to hire the other applicants

² Respondent Panal died on September 22, 2011 (*rollo*, p. 186), and was substituted by his siblings Pastora P. Pialago, Jose Silverio T. Panal and Gregoria P. Sanico (*rollo*, pp. 209-210).

³ *Rollo*, p. 47.

⁴ Entitled, *Guidelines on the Separation Program of the NPC and the Selection and Placement of Personnel in the NPC Table of Organization*.

⁵ *Rollo*, p. 47.

⁶ *Id.* at 101.

⁷ *Id.* at 64-68.

⁸ *Id.* at 65.

for the positions had been based on “behavioral traits.” The letter to that effect pertinently reads:

Dear Ms. Cabanag and Mr. Panal,

This has reference to your letter dated March 6, 2003 regarding your inquiry of not being included in the Chemical Laboratory Work Schedule for March 2003. Allow us to respond to your concerns point-by-point as enumerated in your letter, to wit:

x x x x

UNEXPECTED HAVING BEEN IN THE SERVICE FOR A CONSIDERABLE LENGTH OF TIME WITH GOOD PERFORMANCE

Let it be reiterated that the position of Principal Chemist Analyst C had been reduced from eight to only four in the new T.O. With our re-hiring policy that all positions are contestable, we expect numerous applicants in all positions.

Assuming that incumbents are given the highest priority in re-hiring, this means that they have to be force-ranked on the basis of education, experience, performance and behavioral traits. The Personnel Selection Committee considered fairly the qualifications of all the applicants. Regrettably, as the new T.O. allowed, only four of the eight incumbents were chosen by the selection board and you are among the ones not chosen. Let it be said, as it is said many times, that in cases where all applicants met the minimum requirements, the behavioral trait of the employee played a very vital role.⁹

The respondents ultimately filed against the petitioner a complaint for illegal dismissal in the Civil Service Regional Office (CSRO) in Cebu City.

On December 8, 2003, the CSRO dismissed the complaint for illegal dismissal as premature, considering that the Certificate of Final Action on the Grievance (CFAG) was not yet the decision by the appointing authority.¹⁰

On January 20, 2004, Rogelio M. Murga, the petitioner’s President, later sustained the decision of the Grievance Committee to which the matter was subsequently brought. In turn, the CSRO upheld Murga’s action as a valid exercise of discretionary power by the appointing authority.¹¹

Ruling of the CSC

On appeal, the CSC rendered its decision upholding the petitioner’s exercise of its discretionary power as the appointing authority, emphasizing

⁹ Id. at 69-70.

¹⁰ Id. at 48.

¹¹ Id.

that the positions were deemed abolished during the reorganization, such that no employee could claim any vested right to the positions. The CSC ruled that it had no reason to interfere with the petitioner's exercise of its discretionary power, thusly:

[C]onsistent with the ruling of the Commission in Jimenez, et al (CSC Resolution No. 030338 dated March 12, 2003), it was held that:

“Reorganization as a general rule, is deemed a valid cause for separation. This flows from the diction that in cases of reorganization, positions are deemed abolished. In that event, no dismissal or separation actually occurs because the position itself ceases to exist.”

x x x x

“Generally speaking, under the aegis of a bonafide Reorganization as what transpired in the present controversy, all existing positions are deemed abolished. All incumbents are separated from the service as a consequence thereof.” x x x

In this particular case, after the implementation of the EPIRA Law NPC has a new table of organization wherein the positions are considered new and vacant. No former NPC employee can claim vested right to new positions. It is the NPC Board who has the power “to adapt and set guidelines for the employment of personnel on the basis of merit, technical competence, and moral character.”

Moreover, the Commission cannot interfere in the discretionary power of the appointing authority. As held in the case of **Lapinid vs. CSC, G.R. No. 96298 (1991)**, the Supreme Court ruled as follows:

“Appointment is a highly discretionary act that even this Court cannot compel. While the act of appointment may in proper case be the subject of mandamus, the selection itself of the appointee taking into account the totality of his justifications including those abstract qualities that define his personality is the prerogative of the appointing authority.”

Further, the EPIRA Act provides grounds for legal termination of services of NPC officials and employees. It is thus clear that the appellants have no preferential right over the positions they previously held.

WHEREFORE, the instant appeal of Fraulein C. Cabanag and Jesus T. Panal from the decision of NAPOCOR President Rogelio M. Murga upholding their non-appointment to the position of Principal Chemists Analyst C is hereby DENIED.

SO ORDERED.¹²

On motion for reconsideration, however, the CSC reversed itself, and declared instead that although the respondents' termination was valid under

¹² Id. at 75-76.

the reorganization, they should have been preferred in the appointment of the candidates for the position of Principal Chemist C, to wit:

On the issue of whether NPC complied with the civil service rules and regulations with regard to the appointment of Jonah Carmen L. Facturan, Marietta S. Roxas, Cromwell M. Bulandres and Ana Jane Somoza, Principal Chemists C, a review of the qualification standard for the said position is in order.

The approved Revised NPC Qualification Standard (QS) provides the following qualifications for the position of Principal Chemist C:

“Education	:	Bachelor’s Degree in Chemistry
“Experience	:	3 years relevant experience
“Training	:	16 hours of relevant training
“Eligibility	:	RA 1080”

The above QS specifically requires a Bachelor’s Degree in Chemistry and RA 1080 (Chemistry) eligibility for appointment as Principal Chemist C since the duties of the said position constitute the practice of Chemistry which is regulated by **Republic Act No. 754**.

Applicable is Item No. 5, Part V of the Revised Policies on Qualification Standards which provides as follows:

“5. Eligibilities resulting from passing the bar/board examinations shall be required for appointment to positions the duties of which constitute the practice of profession(s) regulated by the Philippine BAR/Board Laws.”

Applying the above QS in relation to **Item No. 5, Part V of the Revised Policies on Qualification Standards**, it is necessary that the appointee to Principal Chemist C position at NPC should be a licensed chemist.

Movants alleged that they are licensed chemists and meet the prescribed qualifications for Principal Chemist C. They further alleged that of the four (4) appointees to the position of Principal Chemist C at the PGPP, only Somoza is a licensed chemist and the rest (Jonah Carmen L. Facturan, Marietta S. Roxas, and Cromwell M. Bulandres) are chemical engineers. These allegations are not disputed by NPC. Hence, they are presumed to be correct. Consequently, of the four (4) above-mentioned appointments to Principal Chemist C position at Palinpinon Geothermal Power Plant, only the appointment of Somoza was in accord with Civil Service law and rules.

Pursuant to **Section 5, Rule 33 of the Implementing Rules of the EPIRA Law**, where there are two or more qualified former NPC personnel applying for the same position, they enjoy the same preference and the appointing authority is given wide latitude of discretion in choosing who among them shall be appointed. Fundamental is the rule that appointment is an essentially discretionary power and must be performed by the officer in whom it is vested according to his best lights, the only condition being that the appointee shall possess the qualifications required by law. If he does, then the appointment cannot be faulted on the ground

that there are others better qualified who should have been preferred. This is a political question involving considerations of wisdom which only the appointing authority can decide. x x x

However, where the appointee lacks any of the qualifications required by law as when he does not possess the appropriate civil service eligibility, the appointing authority abused the exercise of his discretion in issuing the appointment, and the same is reviewable by the Commission or any of its regional/field offices, making the abuse subject to correction.

Hence, in the instance case, Cabanag and Panal who applied for the position of Principal Chemist C and to which they qualified, enjoy preference in appointment to said position.

WHEREFORE, this Office hereby sets aside its Decision dated October 3, 2005 and finds Fraulein C. Cabanag and Jesus T. Panal, former Principal Chemists Analyst C (SG-13), Palinpinon Geothermal Power Plant, qualified for appointment to the position of Principal Chemist C at Palinpinon Geothermal Power Plant. Hence, they should be given preference in appointment to said position pursuant to Section 5, Rule 33 of the Implementing Rules and Regulations of Republic Act No. 9136.¹³

Not satisfied, the respondents still appealed to the CA, to plead that the CSC should have further ordered their reinstatement in view of the illegality of their termination.¹⁴

Ruling of the CA

In the assailed decision,¹⁵ the CA found that the CSC had erroneously upheld the termination of the respondents pursuant to the reorganization. It opined that because the Supreme Court had declared NPB Resolution No. 2002-124 and NPB Resolution No. 2002-125 void in *NPC Drivers and Mechanics Association (NPC-DAMA) v. National Power Corporation(NPC)*¹⁶ the respondents' termination became illegal for being devoid of any legal foundation; and that they should be reinstated to their former positions; and that based on the pronouncement in *NPC-DAMA* and the subsequent adoption of NPB Resolution No. 2007-55, the respondents were entitled to backwages and other benefits computed from March 1, 2003 until September 14, 2007.¹⁷

Issue

The petitioner has appealed on the sole ground that:

¹³ Id. at 94-95.

¹⁴ Id. at 49.

¹⁵ Supra note 1.

¹⁶ G.R. No. 156208, September 26, 2006, 503 SCRA 138.

¹⁷ *Rollo*, pp. 53-54.

THE COURT OF APPEALS ERRED IN HOLDING THAT RESPONDENTS' TERMINATION FROM EMPLOYMENT WAS ILLEGAL ON THE BASIS OF THE RULING IN *NPC DAMA, ET AL. v. NPC*

The petitioner claims that the implementation of the nullified NPB Resolution No. 2002-124 and NPB Resolution No. 2002-125 had only resulted in the separation from the service of 16 top level executives; that on January 22, 2003, its NBP passed NPB Resolution No. 2003-11 to amend NBP Resolution No. 2002-124 by approving the revised 2003 NPC Restructuring Timetable; that NPB Resolution No. 2003-11 mandated that the legal separation of the employees should only take place after the conclusion of the selection of applicants to fill the positions under the new TO; that NPB Resolution No. 2003-12, which was also passed on the same date as NPB Resolution No. 2003-11, approved the appointments of the 16 executives based on the revised TO effective January 31, 2003 pursuant to NPB Resolution No. 2002-124; that *NPC-DAMA* did not nullify NPB Resolution No. 2003-11, which the NBP ratified through the adoption of NPB Resolution No. 2007-55 if only to erase doubts as to the validity of the latter resolution; and that, in any event, the pending resolution of its motion for reconsideration in *NPC-DAMA*, there could not be any pronouncement to the effect that the implementation of NPB Resolution No. 2002-124 and NPB Resolution No.2002-125 extended to the respondents.¹⁸

In contrast, the respondents submit that they were illegally dismissed under the guise of the reorganization pursuant to NPB Resolution No. 2002-124 and NPB Resolution No. 2002-125 which the Supreme Court had meanwhile declared as void in *NPC-DAMA*.¹⁹

Atty. Martin Gerard S. Cornelio filed a *Notice of Death (with Withdrawal as Counsel and Manifestation)*, informing the Court about the death of respondent Jesus T. Panal, and giving notice of his withdrawal as counsel for Panal. He prayed that because his fees were only contingent, an attorney's lien based on *quantum meruit* should be entered.²⁰

Accordingly, the main issue to be resolved is whether or not the respondents were illegally dismissed based on the implementation of NPB Resolution No. 2002-124 and NPB Resolution No. 2002-125. The secondary issue concerns Atty. Cornelio's prayer for the attorney's lien based on *quantum meruit* vis-à-vis the late Panal's recovery herein.

¹⁸ Id. at 20-29.

¹⁹ Id. at 133-134, 219-220.

²⁰ Id. at 183-184.

Ruling of the Court

We deny the petition for review on *certiorari* for its lack of merit.

I

***NPC-DAMA v. National Power Corporation* applies on the case at bar**

The issue regarding the scope of NPB Resolution No. 2002-124 and NPB Resolution No. 2002-125 is nothing new. In the June 30, 2014 decision promulgated in *NPC-DAMA, supra*, the Court resolved that said resolutions did not only cover the 16 top-level executives as insisted upon by the petitioner, but all of the petitioner's employees whose dismissals were based on the implementation of NPB Resolution No. 2002-124 and NPB Resolution No. 2002-125, *viz.:*

We conclude that the final September 26, 2006 Decision and September 17, 2008 Resolution cover the separation from employment of **all NPC employees**. As we explained in the final September 17, 2008 Resolution, the logical and necessary consequence of the nullification of NPB Resolution Nos. 2002-124 and 2002-125 was the illegality of the dismissal of the NPC employees, since their separation from employment stemmed from these nullified NPB resolutions. Our final rulings could not have intended any other meaning. All these pleadings filed prior to our final rulings indicate that the injunction case affected all NPC employees.

x x x x

The records show that the petition was a class suit filed in behalf of three thousand NPC employees, more or less, affected by the nullified NPB resolutions. The records further show that **the pleadings filed by the NPC bore its admission that the nullified NPB resolutions covered the separation** of all NPC personnel. If it had been otherwise, the NPC would not have claimed a huge amount of monetary liability if the subject NPB resolutions had to be nullified. The NPC claimed that its monetary liability under the Court's final ruling would amount to ₱4,701,354,073.00 – an amount that would cover the separation package of more employees than the 16 officials that the NPC claimed.²¹

Hence, we hereby declare that the respondents' termination was by virtue of said resolutions. In the Court's resolution promulgated on December 2, 2009 in *NPC-DAMA*,²² we expressly dealt with the effective dates of termination of the affected NPC employees for purposes of computing their backwages and other monetary benefits, to wit:

²¹ G.R. No. 156208, 727 SCRA 363, at 399-401.

²² G.R. No. 156208, 606 SCRA 409.

[A]s regards their **right to reinstatement, or separation pay in lieu of reinstatement, pursuant to a validly approved Separation Program, plus backwages, wage adjustments, and other benefits**, the same shall be computed from the date of legal termination as stated in NPC Circular No. 2003-09, to wit:

a) The legal termination of **key officials**, i.e., the Corporate Secretary, Vice Presidents and Senior Vice Presidents who were appointed under NP Board Resolution No. 2003-12, shall be at the close of office hours of **January 31, 2003**.

b) The legal termination of personnel who availed of the early leavers' scheme shall be on the **last day of service** in NPC but **not beyond January 15, 2003**.

c) The legal termination of personnel who were **no longer employed in NPC after June 26, 2001** shall be the actual separation in NPC.

d) **For all other NPC personnel, their legal termination shall be at the close of office hours/shift schedule of February 28, 2003.**

but deducting therefrom the amount of separation benefits which they previously received under the null NPB Resolutions.²³ (bold underscoring supplied for emphasis)

Based on the categories of the separated employees, the respondents herein were illegally terminated at the close of office hours on February 28, 2003. Accordingly, the respondents are entitled to the judgment awards set forth in the September 17, 2008 Resolution²⁴ promulgated in *NPC-DAMA*.

Still, the petitioner insists that the approval of NPB Resolution No. 2007-55 had a curative effect on the void NPB Resolution No. 2002-124 and NPB Resolution No. 2002-125.

The insistence of the petitioner is erroneous. We have clarified in *NPC-DAMA* that NPB Resolution No. 2007-55 could only be applied prospectively; hence, could not ratify or validate the termination of the services of the affected employees,²⁵ the respondents herein included. However, September 14, 2007, being the date of approval of NPB

²³ Id. at 432-433.

²⁴ G.R. No. 156208, 565 SCRA 417. In the said Resolution, the Court recognized the dismissed employees' right to reinstatement, or separation pay in lieu of reinstatement, pursuant to a validly approved Separation Program; plus backwages, wage adjustments, and other benefits accruing from January 31, 2003 to the date of their reinstatement or payment of separation pay, but deducting therefrom the amount of separation benefits which they may have previously received under the nullified NPB Resolution No. 2002-124 and NPB Resolution No. 2002-125.

²⁵ Id. at 434.

Resolution No. 2007-55, became the effective date of the respondents' valid termination pursuant to Section 47 of the EPIRA.²⁶ As such, the CA was correct in awarding to the respondents backwages and other benefits corresponding to the period from March 1, 2003 until September 14, 2007.

II Attorney's fees to be awarded based on *quantum meruit*

Ordinarily, the determination of the attorney's fees on the basis of *quantum meruit* involves a factual matter, and is to be remanded to the lower court for such reason. Yet, because a remand will needlessly prolong the resolution of Atty. Cornelio's application, justice and equity necessitate our fixing now of the attorney's fees.²⁷

*Quantum meruit*²⁸ is used as basis for determining an attorney's professional fees in the absence of an express agreement between him and his client. For this purpose, the attorney must show his entitlement to a reasonable compensation for the effort expended in pursuing the client's cause.²⁹ In fixing a reasonable compensation for the services rendered by the attorney on the basis of *quantum meruit*, the Court may consider factors such as the time spent, and the extent of services rendered; the novelty and difficulty of the questions involved; the importance of the subject matter; the skill demanded; the probability of losing other employment as a result of the acceptance of the proffered case; the customary charges for similar services; the amount involved in the controversy and the benefits resulting to the client; the certainty of compensation; the character of the employment; and the professional standing of the attorney.³⁰

Atty. Cornelio represented the respondents herein from the time when the case was in the CSC until the filing of the petition for review on *certiorari* in this Court.³¹ In all that time, he took on the task of preparing and filing several pleadings in behalf of both the respondents. Given the time and skill lent by him in defending Panal's cause, as well as taking guidance from Article 111 of the *Labor Code*,³² a provision that explicitly limits the

²⁶ *Id.*

²⁷ *Aquino v. Casabar*, G.R. No. 191470, January 26, 2015, 748 SCRA 181.

²⁸ Literally, "as much as he deserves."

²⁹ *National Power Corporation v. Heirs of Macabangkit Sangkay*, G.R. No. 165828, August 24, 2011, 656 SCRA 60, 96-97.

³⁰ *Orocio v. Anguluan*, G.R. Nos. 179892-93, January 30, 2009, 577 SCRA 531, 551-552.

³¹ Atty. Cornelio filed his motion for withdrawal as counsel for respondent Fraulein Cabanban on November 21, 2011 (*rollo*, pp. 111-112), which the Court granted through the resolution promulgated on June 19, 2012 (*rollo*, p. 176).

³² Art. 111. Attorney's fees.

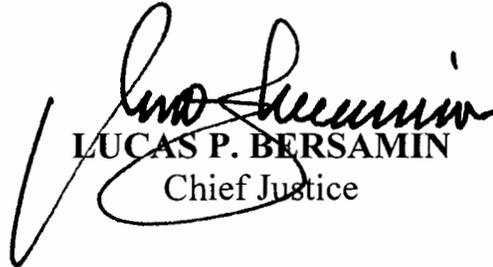
a. In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

b. It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed ten percent of the amount of wages recovered.

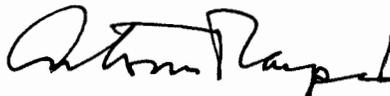
recovery of attorney’s fees in illegal dismissal situations in relation to private employment to 10% of the amounts recovered by the client, we deem it proper to accord to Atty. Cornelio a charging lien of 10% of the amounts that would be awarded in favor of Panal.

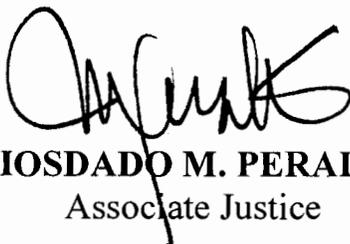
WHEREFORE, the Court **DENIES** the petition for review on *certiorari* for its lack of merit; **AFFIRMS** the decision promulgated on November 17, 2010 by the Court of Appeals; **GRANTS** the motion to register attorney’s lien on the judgment in favor of Jesus T. Panal filed by Atty. Martin Gerard S. Cornelio; **FIXES** Atty. Cornelio’s attorney’s fees on the basis of *quantum meruit* at 10% of the amounts to be awarded to respondent Jesus T. Panal; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.


LUCAS P. BERSAMIN
Chief Justice

WE CONCUR:

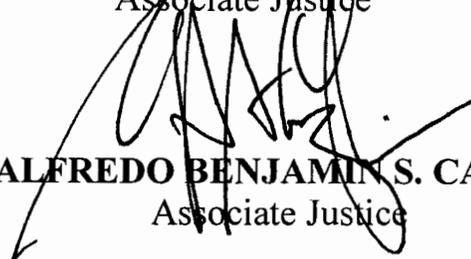

ANTONIO T. CARPIO
Associate Justice


DIOSDADO M. PERALTA
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice

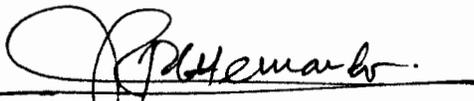

FRANCIS H. JARDELEZA
Associate Justice

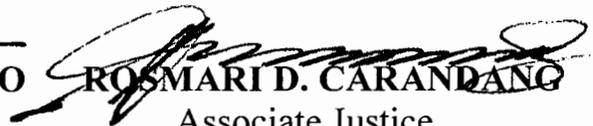

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


ANDRES B. REYES, JR.
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice

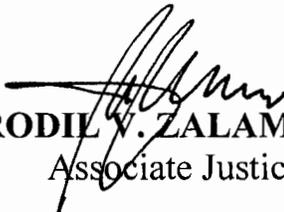
(On Leave)
JOSE C. REYES, JR.
Associate Justice


RAMON PAUL L. HERNANDO
 Associate Justice


ROSMARI D. CARANDANG
 Associate Justice

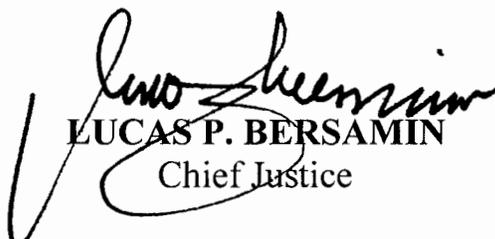

AMY C. LAZARO-JAVIER
 Associate Justice


HENRI JEAN PAUL B. INTING
 Associate Justice


RODIL V. ZALAMEDA
 Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


LUCAS P. BERSAMIN
 Chief Justice