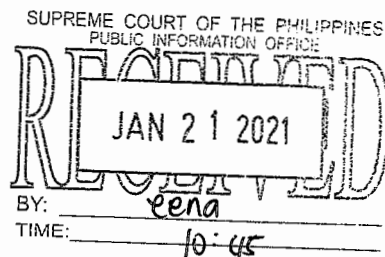




Republic of the Philippines
Supreme Court
Manila



EN BANC

ATTY. NORBERTO DABILBIL
CABIBIHAN,

Petitioner,

G.R. No. 230524

Present:

- versus -

DIOSDADO JOSE M. ALLADO, as
ADMINISTRATOR of the
METROPOLITAN
WATERWORKS AND
SEWERAGE SYSTEM (MWSS),
and REYNALDO A. VILLAR, as
CHAIRPERSON of the
COMMISSION ON AUDIT (COA),
Respondents.

PERALTA, C.J.,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
GESMUNDO,
REYES, J. JR.,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,*
LOPEZ,
DELOS SANTOS,
GAERLAN, and
BALTAZAR-PADILLA, JJ.**

Promulgated:

September 1, 2020

X - - - - - X

DECISION

REYES, J. JR., J.:

The present Petition for Review on *Certiorari*¹ seeks to reverse and set aside, or modify the May 31, 2016 Decision² and February 27, 2017 Resolution³ of the Court of Appeals (CA) in CA-G.R. SP Nos. 138034 and 138084, which

* No part.

** On sick leave.

¹ *Rollo*, pp. 28-57

² Penned by Associate Justice Pedro B. Corales with Associate Justices Sesinando E. Villon and Rodil V. Zalameda (now a member of the Court), concurring; *rollo*, pp. 596-616.

³ Id. at 642-644.

affirmed the August 26, 2014 Decision No. 140682⁴ and October 28, 2014 Resolution No. 1401550⁵ of the Civil Service Commission (CSC).

The Facts

This administrative case stemmed from a Letter dated June 2, 2008 written by respondent Diosdado Jose M. Allado (Allado), then MWSS Administrator, addressed to former COA Chairman Reynaldo A. Villar (Chairman Villar). In said letter, Allado brought to Chairman Villar's attention the existence of several unrecorded checks relating to the cash advances (CA) of MWSS Supervising Cashier Iris Mendoza (Mendoza), which were allegedly used to pay for the bonuses and other benefits of COA-MWSS personnel.⁶ Allado described the same as a "virtual bribery" and requested for the replacement of then State Auditor (SA) V Atty. Norberto D. Cabibihan (petitioner) and his entire staff.⁷

Consequently, pursuant to Office Order No. 2009-528 dated July 21, 2009 issued by Chairman Villar, a team from the Fraud Audit and Investigation Office, Legal Services Sector (FAIO-LSS) of the COA conducted a fact-finding investigation.⁸ The team submitted its Investigation Report⁹ dated 24 June 2010 summarized¹⁰ as follows:

Name	Acts Committed	Amount	Offenses Charged
1. [Petitioner]	1.Receiving and/or directing his staff to receive unauthorized allowances from the cash advances of [Mendoza]	P9,182,038.00	Grave Misconduct, Serious Dishonesty, Conduct Prejudicial to the Best Interest of the Service and Violation of Reasonable Office Rules and Regulations
	2.Avaling of the Car Assistance Plan of the MWSS Employees Welfare Fund ([CAP-JMEWF])	P1,200,000.00	
	3.Receiving Bids and Awards Committee honoraria	P27,000.00	
	4. Avaling of the MWSS Housing Project	P419,005.40 (excluding house construction amounting to P393,936.65)	
2. Efren D. Ayson	1.Receiving unauthorized allowances from cash advances	P388,326.00	Grave Misconduct and Violation of

⁴ Signed by Chairman Francisco T. Duque III and Commissioners Nieves L. Osorio and Robert S. Martinez; *rollo*, pp. 236-254.

⁵ Id. at 474-484.

⁶ Id. at 118.

⁷ Id.

⁸ Id.

⁹ Submitted by Special Investigator IV Maribel U. De Vera and State Auditor II Emerlinda C. Feliciano, and reviewed by Attorney VI Alexander B. Juliano; id. at 58-70.

¹⁰ Id. at 242-244.

	of [Mendoza]		Reasonable Office Rules and Regulations
	2.Availing of the [CAP-MEWF]	P500,000.00	
3. Lilia V. Ronquillo	1.Receiving unauthorized allowances from the cash advances of [Mendoza]	P656,566.00	Grave Misconduct and Violation of Reasonable Office Rules and Regulations
	2.Availing of the [CAP-MEWF]	P600,000.00	
4. Vilma A. Tionson	1.Receiving unauthorized allowances from the cash advances of [Mendoza]	P1,448,745.00	Grave Misconduct and Violation of Reasonable Office Rules and Regulations
	2.Availing of the [CAP-MEWF]	P600,000.00	
5. Pacita Velasquez	1.Receiving unauthorized allowances from the cash advances of [Mendoza]	P630,000.00	Grave Misconduct and Violation of Reasonable Office Rules and Regulations
	2.Receiving Benefits and/or bonuses from MWSS covering the period 1999 to 2003	P93,627.50	
	3.Availing of the [CAP-MEWF]	P500,000.00	
6. Godofredo Villegas	1.Availing of the [CAP-MEWF]	P600,000.00	Grave Misconduct and Violation of Reasonable Office Rules and Regulations

Subsequently, Chairman Villar issued separate Letter Charges to petitioner and other COA-MWSS personnel. The relevant portions of the Letter¹¹ dated July 30, 2010, wherein petitioner was formally charged, is reproduced hereunder:

Dear [Petitioner]:

The result of the investigation by the Team from the Fraud FAIO[-LSS] on the complaint against you and COA-MWSS staff disclosed that you committed the following reprehensible actions:

1. Receiving and/or directing your staff to receive unauthorized allowances from the cash advances [CAs] of [Mendoza] in the total amount of ₱9,182,038.00;
2. Availing of the [CAP-MEWF] amounting to ₱1,200,000.00;
3. Receiving Bids and Awards Committee honoraria in the total amount of ₱27,000.00; and
4. Availing of the MWSS Housing Project valued at ₱419,005.40 excluding house construction amounting to ₱393,936.65.

X X X X

¹¹ Id. at 71-72.

WHEREFORE, you are hereby formally charged xxx and required to submit xxx your answer in writing and under oath, within five (5) days from receipt hereof[.]

x x x x

Very truly yours,

(sgd.)

REYNALDO A. VILLAR
Chairman

In his Answer¹², petitioner claimed that there was complete dearth of evidence to incriminate him and that the administrative case was a form of harassment and a mere retaliatory response to his audit findings against MWSS.

The COA Ruling

In a Decision No. 2013-001¹³ dated January 29, 2013, the COA resolved 12 consolidated administrative cases including that of petitioner's which was docketed as Adm. Case No. 2010-033. The decretal portion of which reads:

WHEREFORE, this Commission hereby finds [petitioner] **GUILTY** of Grave Misconduct, Serious Dishonesty, Conduct Prejudicial to the Best Interest of the Service, and Violation of Reasonable Office Rules and Regulations. Accordingly, and in view of his retirement from the service, the penalties of forfeiture of retirement benefits, cancellation of eligibility, and perpetual disqualification from holding public office are meted upon him. He shall likewise refund the amounts he received from the CAs of [Mendoza], the BAC honorarium, and the amount paid by the MEWF for his car loan.

x x x x¹⁴

The COA ruled that the allegations against petitioner were duly proven by substantial evidence.

First, no less than Mendoza herself admitted that (i) the proceeds of her CAs were for, and were actually handed to, COA-MWSS personnel; and (ii) she was aware of the possibility of her being criminally liable for knowingly acceding to or taking part in the irregular transactions. Mendoza likewise disclosed that she kept the Acknowledgment Receipts (AR) which were signed by COA-MWSS personnel who received the proceeds of her CAs, as well as Indices of Payments. The COA opined that while admittedly ARs are private documents, the same are admissible in evidence as Mendoza herself prepared them and authenticated them during the hearing. Moreover, Mendoza's straightforward declarations ascertained that petitioner was among the COA-MWSS personnel who illegally received bonuses and benefits.

¹² Id. at 73-86.

¹³ Signed by Chairperson Ma. Gracia M. Pulido Tan and Commissioners Juanito G. Espino, Jr. and Heidi L. Mendoza; id. at 117-146.

¹⁴ Id. at 144.

Second, petitioner's defense that he was paying 100% of the purchase price of the vehicle under the CAP-MEWF was belied by his own documentary evidence. Petitioner's Car Loan Contract indicated that the total purchase price of ₱1,200,000.00 would be paid in equal monthly amortization over a period of 48 months, this means that he must be paying at least ₱25,000.00/month. However, the 12 post-dated checks issued by petitioner for payment of the monthly amortization were only for ₱10,000.00 each. Thus, the COA was convinced that petitioner was only paying 40% of the purchase price of the vehicle and had benefited from the MEWF to the extent of 60% of the total cost of the car.

Third, there were three certified Philippine National Bank (PNB) checks for ₱9,000.00 each made payable to petitioner which supports the allegation that he indeed received BAC honoraria.

Fourth, it was sufficiently established that petitioner was the original awardee of Lot Nos. 11 and 12 in the MWSS Housing Project in La Mesa Dam notwithstanding the subsequent transfer to a certain Vicente Elefante (Elefante).

Fifth, the COA ruled that petitioner was likewise guilty of Serious Dishonesty for borrowing documents pertaining to his CAP-MEWF loan and never returning the same as evidenced by a Log Book entry on December 19, 2006 with a notation "not returned to the DV".

Petitioner filed a Motion for Reconsideration¹⁵ but the COA, in its Resolution¹⁶ dated October 2, 2013, affirmed with finality its Decision No. 2013-001.

The CSC Ruling

Upon appeal, the CSC found that the charge of Serious Dishonesty was not fully substantiated considering that: (1) the notation on the log book that was presented as evidence to show the alleged borrowing and failing to return the car loan documents contained no trace of petitioner's signature thereon; and (2) said act was not particularly alleged in the formal charge issued to petitioner. Moreover, the CSC ruled that as to the total amount of ₱9,182,038.00 which all the COA-MWSS purportedly received, the prosecution likewise failed to adequately provide a link that petitioner received the same. Accordingly, the CSC modified the COA decision, viz.:

WHEREFORE, the Appeals of [petitioner] xxx are **DISMISSED** for lack of merit. Accordingly, the Decision xxx rendered by the [COA] xxx is **AFFIRMED with MODIFICATION**, in the sense that he is only liable for the offenses of Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service and Violation of Reasonable Office Rules and Regulations. In addition, he is ordered to refund only the amount he received as BAC Honorarium in the

¹⁵ Id. at 147-167.

¹⁶ Id. at 168-171.

amount of P27,000.00 and the amount paid by the [MEWF] for his car loan to the extent of the fringe benefit of P720,000.00 except the amount of P9,182,038.00 which was not substantiated. In view of his retirement from the service, however, the penalty of dismissal from the service is deemed imposed. [Petitioner] is also ordered to refund the amount received from the [CAs] of [Mendoza] amount to P694,659.00.

x x x x¹⁷

Thereafter, in its Resolution¹⁸ dated October 28, 2014, the CSC partly granted the Motion for Reconsideration filed by petitioner and recalled the directive requiring the latter to refund the amount he received from the CA of Mendoza in the amount of P694,659.00. The CSC clarified that the prosecution failed to prove that, indeed, petitioner received any of the unauthorized allowances from the CAs of Mendoza.

The CA Ruling

In the herein assailed Decision, the CA “failed to see any plausible reason to depart from the conclusions of the CSC”¹⁹ and thus held:

WHEREFORE, the instant petitions for review are **DENIED**. The August 26, 2014 Decision No. 140682 and October 28, 2014 Resolution No. 1401550 of the [CSC] are hereby **AFFIRMED**.

SO ORDERED.²⁰

Petitioner’s Motion for Reconsideration²¹ was denied in a Resolution²² dated February 27, 2017.

Hence, this petition.

Our Ruling

The petition fails on the merits.

As early as January 9, 1989, the prohibition of the grant of fringe benefits to COA personnel assigned in national, local, and corporate sectors was enunciated in COA Memorandum No. 89-584.

On July 1, 1989, Republic Act (R.A.) No. 6758 otherwise known as “*An Act Prescribing a Revised Compensation and Position Classification System in the Government and For Other Purposes*” took effect. It standardizes the salary rates of government officials and employees and applies to “all positions, appointive or

¹⁷ Id. at 253.

¹⁸ Supra note 5.

¹⁹ *Rollo*, p. 610.

²⁰ Id. at 616.

²¹ Id. at 619-629.

²² Id. at 642-644.

elective, on full or part-time basis, now existing or hereafter created in the government, including government-owned or controlled corporations and government financial institutions.”²³ Section 18 of R.A. No. 6758 provides:

Section 18. *Additional Compensation of Commission on Audit Personnel and of Other Agencies.* – In order to preserve the independence and integrity of the Commission on Audit (COA), its officials and employees are prohibited from receiving salaries, honoraria, bonuses, allowances or other emoluments from any government entity, local government unit, and government-owned and controlled corporations, and government financial institution, except those compensation paid directly be the COA out of its appropriations and contributions.

Government entities, including government-owned or controlled corporations including financial institutions and local government units are hereby prohibited from assessing or billing other government entities, government-owned or controlled corporations including financial institutions or local government units for services rendered by its officials and employees as part of their regular functions for purposes of paying additional compensation to said officials and employees.

On September 22, 1999, COA issued Memorandum No. 99-066 implementing R.A. 6758 and restating the policy against the receipt by auditing personnel of honorarium, allowance, bonus or other emolument as a form of fringe benefit or additional compensation.

Verily, COA personnel are proscribed from receiving or accepting salaries, allowances, and other emoluments from any government entity including government owned and controlled corporations.

In *Villareña v. COA*,²⁴ where it was argued that Section 18 of R.A. No. 6758 violates the equal protection clause under the Constitution, the Court ruled that the said clause does not preclude classification of individuals who may be accorded different treatment under the law as long as the classification is reasonable and not arbitrary, viz.:

Indeed, there are valid reasons to treat COA officials differently from other national government officials. The primary function of an auditor is to prevent irregular, unnecessary, excessive or extravagant expenditures of government funds. To be able properly to perform their constitutional mandate, COA officials need to be insulated from unwarranted influences, so that they can act with independence and integrity. As extensively discussed in *Tejada v. Domingo*, the prohibition under Section 18 of Republic Act No. 6758 was designed precisely to serve this purpose. The removal of the temptation and enticement the extra emoluments may provide is designed to be an effective way of vigorously and aggressively enforcing the Constitutional provision mandating the COA to prevent or disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.

²³ Section 4, R.A. No. 6758; See also *Mendoza v. COA*, 717 Phil. 491, 524 (2013).

²⁴ 455 Phil. 908 (2003).

K

Stated otherwise, the COA personnel who have nothing to look forward to or expect from their assigned offices in terms of extra benefits, would have no reason to accord special treatment to the latter by closing their eyes to irregular or unlawful expenditures or use of funds or property, or conducting a perfunctory audit. The law realizes that such extra benefits could diminish the personnel's seriousness and dedication in the pursuit of their assigned tasks, affect their impartiality and provide a continuing temptation to ingratiate themselves to the government entity, local government unit, government-owned and controlled corporations and government financial institutions, as the case may be. In the end then, they would become ineffective auditors.

Definitely, petitioner, a State Auditor at the time material to the case, was disqualified from receiving or availing of MWSS benefits.

Petitioner insists that: (1) his availment of the CAP-MEWF was done in good faith; (2) he did not receive any BAC honoraria; and (3) he did not "receive" the MWSS Housing Project as contemplated by, or within the meaning, and in violation, of Section 18 of R.A. No. 6758.²⁵

One. In availing himself of the CAP-MEWF, no amount of good faith can be attributed to petitioner. Good faith necessitates honesty of intention, free from any knowledge of circumstances that ought to have prompted him to undertake an inquiry.²⁶ In *Office of the Ombudsman v. Brillantes*,²⁷ the Court explained:

In common usage, the term good faith is ordinarily used to describe that state of mind denoting honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious. In short, good faith is actually a question of intention. Although this is something internal, a person's intention can be ascertained by relying not on his own protestations of good faith, which is self-serving, but on evidence of his conduct and outward acts. (citations omitted)

And, as the CSC correctly stated, petitioner's claim of good faith is belied by his being a lawyer and knowing fully well that he is benefited in the amount of ₱720,000.00 without any consideration.²⁸ To recall, the total amount of the car loan, as stipulated in petitioner's Car Loan Contract,²⁹ was ₱1,200,000.00 to be paid in equal monthly installments for a period of 48 months. But, upon review of the documentary evidence specifically, the 12 post-dated checks issued by petitioner, both the COA and CSC found that petitioner paid only ₱10,000.00 for his monthly amortization or the equivalent of 40% of the total purchase price (i.e. ₱480,000.00).³⁰ Thus, the Court is convinced that petitioner could not have been in good faith when he availed of the CAP-MEWF.

²⁵ *Rollo*, p. 11.

²⁶ *Re: Valderoso*, 781 Phil. 22 (2016).

²⁷ 796 Phil. 162 (2016).

²⁸ *Rollo*, p. 249.

²⁹ *Id.* at 727-730.

³⁰ ₱10,000.00 x 48 months.

Second. Anent petitioner's receipt of BAC honoraria, let it first be noted that Sections 13³¹ and 15³² of R.A. No. 9184³³ clearly tells us that representatives from COA sit only as observers and only members of the BAC are entitled to honoraria. Evidently, petitioner was not entitled to a remuneration from the BAC yet, he was able to pocket said allowance. The Court concurs with the finding of the CA, to wit.:

Equally telling are the PNB Check Nos. 202818, 021048, and 021275 recorded in the MWSS Claims Control and Check Register and payable to the order of [petitioner] which point to no other conclusion that he actually received BAC Honorarium of ₱9,000.00 for the months of March, June, and July 2006 or a total of ₱27,000.00. Contrary to [petitioner]'s postulate that payment of the checks [was] never proven, the dorsal portion of PNB Check No. [021048] shows the written words: "NORBERTO CABIBIHAN; COA, MWSS, QC; and Acct. No. 1697-0137-13" followed by machined printed numerical figures in the words "Land Bank of the Philippines". Hence, it was incumbent upon [petitioner] to show that Acct. No. 1697-0137-13 does not belong to him rather than for the COA or CSC to prove the ownership of the same. Similarly, on the dorsal portions of PNB Check Nos. 202818 and [021275] are signatures that find semblance to [petitioner]'s signature on his motion for reconsideration of the COA's January 29, 2013 Decision No. 2013-001 and on the PNB checks he issued for the monthly amortization of his car loan.³⁴

Third. The Court, as did the CA, finds that petitioner was, in fact, an awardee of the MWSS Housing Project located in La Mesa Heights, Greater Lagro, Novaliches, Quezon City. The following documentary evidence confirms petitioner's ownership thereof: 1) List of Lot Awardees indicating that petitioner was awarded Lot Nos. 11 and 12; 2) Demand Letter dated September 7, 2005 requiring petitioner to settle his obligation as an awardee in the amount of ₱419,005.40; and 3) Official Receipt dated April 7, 2010 showing that petitioner paid ₱146,000 as payment for the said lots. Granting that petitioner already conveyed ownership to Elefante, the Court agrees that such "act is considered as an afterthought knowing that he will eventually face charges as a consequence of his act"³⁵ and only "bolsters the fact that [petitioner] was the actual original awardee of the two (2) lots in the MWSS Housing Project."³⁶

³¹ **Section 13. Observers.** - To enhance the transparency of the process, the BAC shall, in all stages of the procurement process, invite, in addition to the representative of the Commission on Audit, at least two(2) observers to sit in its proceedings, one(1) from a duly recognized private group in a sector or discipline relevant to the procurement at hand, and the other from a non-government organization: Provided, however, That they do not have any direct or indirect interest in the contract to be bid out. The observers should be duly registered with the Securities and Exchange Commission and should meet the criteria for observers as set forth in the IRR.

³² **Section 15. Honoraria of BAC Members** - The Procuring Entity may grant payment of honoraria to the BAC members in an amount not to exceed twenty five percent (25%) of their respective basic monthly salary subject to availability of funds. For this purpose, the Department of Budget and Management (DBM) shall promulgate the necessary guidelines.

³³ AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES.

³⁴ Id. at 612.

³⁵ *Rollo*, p. 251.

³⁶ Id. at 611.

In the case of *Galindo v. COA*,³⁷ which is an offshoot of the same FAIO-LSS investigation involving petitioner, the Court opined that the pieces of evidence presented before the COA, such as the CAs, accompanied by the testimony of Mendoza herself, as well as the Indices of Payments and the car loan contracts, were substantial enough to establish Annaliza J. Galindo's and Evelinda P. Pinto's receipt of the disallowed amounts and thus, justify the finding of their administrative liability.

Also, in *Nacion v. COA*,³⁸ Atty. Janet D. Nacion (Nacion) was found guilty of grave misconduct and violation of reasonable rules and regulations for receiving prohibited benefits and allowances from MWSS in the total amount of ₱73,542.00 from 1999-2003; availing of the MWSS Housing Project and Multi-Purpose Loan Program — Car Loan. The Court held therein that:

Nacion's availment of the housing and car programs was undisputed. She claimed though to have availed of these benefits upon an honest belief that she was not prohibited from doing so. Her alleged good faith, nonetheless, could not support exoneration.

X X X X

An observance of the prohibition is mandatory given its purpose *vis-à-vis* the roles which COA personnel are required to perform. Given their mandate to look after compliance with laws and standards in the handling of funds by the government agencies where they are assigned to, COA personnel must prevent any act that may influence them in the discharge of their duties. In the present case, the receipt of the subject benefits and allowances was evidently in violation of the prohibition under the aforequoted Section 18. Nacion should have been wary of her actions and the prohibitions pertinent to her functions, especially as they affected the expenditure of MWSS funds which she was duty-bound to eventually examine.

All told, the Court holds that petitioner's guilt in the present administrative case has been substantially proven.

WHEREFORE, the petition is **DENIED**. The assailed May 31, 2016 Decision and February 27, 2017 Resolution of the Court of Appeals (CA) in CA-G.R. SP Nos. 138034 are **AFFIRMED**.

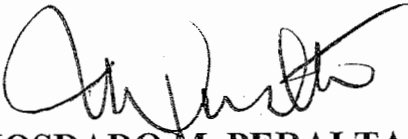
SO ORDERED.

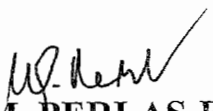

JOSE C. REYES, JR.
Associate Justice

³⁷ 803 Phil. 65 (2017).

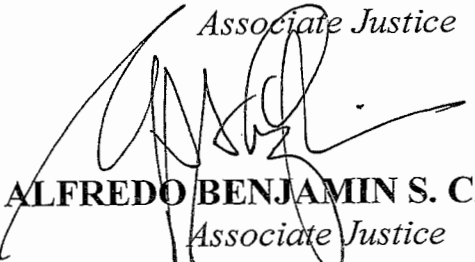
³⁸ 756 Phil. 62 (2015).

WE CONCUR:

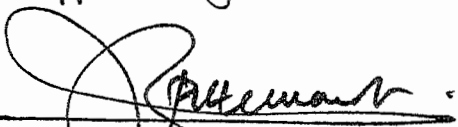

DIOSDADO M. PERALTA
Chief Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC M.V. F. LEONEN
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice

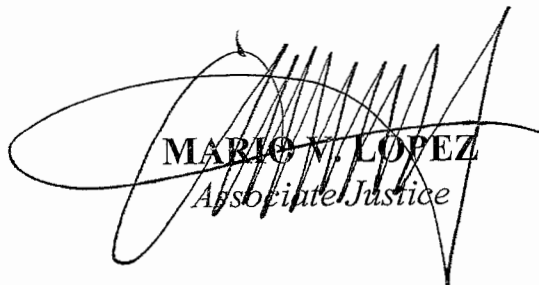

RAMON PAUL L. HERNANDO
Associate Justice


ROSMARI B. CARANDANG
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice

(No Part)
RODIL V. ZALAMEDA
Associate Justice


MARIO N. LOPEZ
Associate Justice

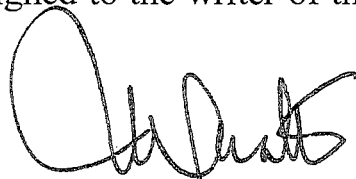

EDGARDO L. DELOS SANTOS
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

(On Sick Leave)
PRISCILLA J. BALTAZAR-PADILLA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified 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.



DIOSDADO M. PERALTA
Chief Justice

