



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

STEFANI C. SAÑO
 Petitioner,

G.R. No. 222822

Present:

-versus -

GESMUNDO, C.J., Chairperson,
 CAGUIOA,
 LAZARO-JAVIER,
 LOPEZ, M.V*, and
 LOPEZ, J.Y., JJ.

**SUBIC BAY METROPOLITAN
 AUTHORITY,**
 Respondent.

Promulgated:

OCT 13 2021

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DECISION

LOPEZ, J., J.:

The present petition seeks to reverse and set aside the Decision¹ dated April 16, 2015 and Resolution² dated February 4, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 131302. The CA affirmed the Decision³ dated May 20, 2013 of the Civil Service Commission (CSC), which found the preventive suspension imposed upon Stefani C. Saño (*Saño*) valid.

The CA summarized the factual and procedural antecedents in this manner:

On 4 April 2012, a shipment of four hundred twenty thousand (420,000) bags of rice consigned to Metro Eastern Corporation [(Metro Eastern)] arrived at the Subic Bay Freeport. The said shipment was unloaded from April 5, 2012 to April 9, 2012 and was stored at the warehouse of Metro Eastern located inside the Subic Bay Freeport.

* On wellness leave.

¹ *Rollo*, pp. 75-82. Penned by Associate Justice Jane Aurora C. Lantion with Associate Justice Leoncia R. Dimagiba and Associate Justice Nina G. Antonio-Valenzuela, concurring.

² *Id.* at 101-102.

³ *Id.* at 144-152.

On 15 May 2012, the Bureau of Customs (BOC) seized the subject shipment for violation of Section 2530 of the Tariff and Customs Code. On 20 July 2012, a press conference was held jointly by the Subic Bay Metropolitan Authority (SBMA) and BOC to publicly announce the seizure of the rice shipment. Thereafter, another joint press conference was held on 31 July, 2012 by SBMA and BOC.

The seizure of the rice shipment became a topic of a privilege speech of Senator Juan Ponce Enrile wherein he expressed his concerns on rice smuggling committed by certain private individuals in connivance with a number of government officials. Thus, on 1 August 2012, the Senate Committees on Agriculture and Foods, Ways and Means, Trade and Commerce and Accountability of Public Officers and Investigation (Blue Ribbon) conducted a joint Senate Investigation on the said rice shipment.

During the Senate Hearing, petitioner Stefani C. Saño (hereafter petitioner), as SBMA Senior Deputy Administrator for Business and Investment, was implicated in the controversy as the government official who introduced the owner/shipper of the rice, Amira C Foods International DMCC (Amira) to the locator-consignee Metro Eastern in coordination with a certain Vicente "Bong" Cuevas. Petitioner was likewise involved in the search for a warehouse where the 420,000 bags of rice could be stored and suggested to Metro Eastern to help Amira find a buyer of the shipment.

In response thereto, on 3 August 2012, petitioner issued a statement in a press conference categorically denying that he was the one who introduced Amira to Metro Eastern and any participation in the processing of the rice shipment, including the search for warehouses where the same could be stored. He also stated, among others, that part of his official duties, as Senior Deputy Administrator for Business and Investment, is to meet the representatives of Amira who inquired about the validity of Metro Eastern's right to do transshipment, logistics, trading and importation.

On 13 August 2012, petitioner appeared before the Senate Committees and declared, under oath, that he has no knowledge, function, involvement or responsibility and that he did not participate in any manner in the processing of the shipment, including the alleged search for a warehouse for the rice shipment in question, and further denying that he suggested to anyone or any party to search for buyers of the shipment. However, during the interpellations of the Senators to petitioner, the latter admitted that: 1.) he received a call from Cuevas in relation to the problems regarding the rice shipment; and 2.) as a result of Cuevas' call, he called Atty. Redentor Tuazon, OIC- Senior Deputy Administrator for Operations to intervene on the matter and used the name of Senator Enrile to convince Atty. Tuazon to release the shipment.

On 15 August 2012, SBMA Chairman and Administrator Roberto V. Garcia issued a *Formal Charge and Order of preventive Suspension* charging petitioner with Grave Misconduct, Gross Neglect of Duty, Dishonesty and Conduct Prejudicial to the Interest of the Service and placing him under a ninety (90) day preventive suspension because he

deliberately concealed to the SBMA Chairman and Administrator his participation/involvement in the said rice shipment and that he abused his position to the prejudice of the Agency.

Thereafter, the Senate Committees issued a Report dated 6 February 2013 wherein it was recommended, among others, that the CSC "pursue the investigation" on petitioner for possible violation of the Code of Conduct and Ethical Standard.

Meanwhile, petitioner assailed the 90-day preventive suspension order before the CSC claiming, among others, that he was denied due process and that said order was issued with manifest partiality, bad faith and grave abuse of authority. On 20 May 2013, the CSC rendered a *Decision* finding the preventive suspension imposed against petitioner valid and in order.

Petitioner filed a *Motion for Reconsideration*, but the same was denied.⁴

Thereafter, Saño filed a petition for review under Rule 43 of the Rules of Court before the CA, raising the following issues:

I

THE CSC ERRED IN STATING THAT IT CANNOT RULE ON THE MATTER WHETHER THE FORMAL CHARGE IS NULL AND VOID FOR BEING A VIOLATION OF PETITIONER'S CONSTITUTIONAL RIGHT TO DUE PROCESS UNTIL A JUDGMENT ON THE MERIT IS RENDERED.

II

THE CSC ERRONEOUSLY RULED THAT THE PREVENTIVE SUSPENSION IS IN ORDER.

III

THERE IS GRAVE ERROR IN THE CSC'S FINDINGS THAT THERE IS NO EVIDENCE THAT THE ISSUANCE OF FORMAL CHARGE WAS ATTENDED WITH MANIFEST PARTIALITY, BIAS, EVIDENT BAD FAITH AND GRAVE ABUSE OF AUTHORITY.⁵

On April 16, 2015, the CA rendered the assailed decision, affirming the Decision of the CSC.

WHEREFORE, the instant petition is **DISMISSED**. The Decision No. 1305525 dated 20 May 2013 of the Civil Service Commission is hereby **AFFIRMED**.

⁴ *Id.* at 76-78.

⁵ *Id.* at 78.

SO ORDERED.⁶

The CA, in affirming the CSC, opined that Subic Bay Metropolitan Authority (SBMA) Chairman and Administrator Roberto B. Garcia (*Garcia*) had the right to issue an order of suspension against Saño, a subordinate officer who was being charged with dishonesty, gross neglect, and grave misconduct. According to the CA, the preventive suspension was meant to preclude Saño from possibly exerting undue influence or pressure on the witnesses against him or to prevent him from tampering with documentary evidence on file with his office.⁷

The CA also noted that the formal charge and order of preventive suspension was personally served on Saño wherein he was afforded the opportunity to answer the charges against him, but he refused participate therein. Thus, the CA concluded that there was no denial of procedural due process because the opportunity to be heard was accorded to Saño.⁸

On February 4, 2016, the CA promulgated its equally assailed resolution denying the motion for reconsideration filed by Saño.⁹

Hence, the present petition was instituted.

Saño argues that contrary to the erroneous findings of facts found in the questioned suspension order, there is nothing in the records of the case that would show he used the name of Senator Juan Ponce Enrile to convince Atty. Tuason to release the rice shipment. Saño points to the fact that it would be absurd for Atty. Tuason to be the person to obtain the release of the rice shipment when it was the Bureau of Customs that issued the warrant of seizure and detention.¹⁰

Saño claims that the jurisprudence relied upon by the CA in support of its questioned decision are grossly misplaced. He insists that the pronouncement in *Garcia v. Molina*¹¹ is more apt to his case.¹²

He likewise questions the authority of Garcia to issue the formal charge and preventive suspension as it is the Disciplinary Action Committee that has such authority pursuant to SBMA's own Rules on Administrative Discipline.¹³

⁶ *Id.* at 81-82.

⁷ *Id.* at 79-80.

⁸ *Id.* at 81.

⁹ *Id.* at 101-102.

¹⁰ *Id.* at 49-50.

¹¹ 642 Phil. 6 (2010).

¹² *Rollo*, p. 51.

¹³ *Id.* at 56-57.

Lastly, Saño asserts that his constitutional right to due process was violated if viewed under the guidelines set in *Garcia v. Molina*, ruling.¹⁴

Garcia submitted his *comment*¹⁵ to the petition. He avers that the formal charge against Saño was valid and regular. Garcia claims that the essence of preliminary investigation is to establish *prima facie* evidence to support a formal charge and as he has witnessed the act of his subordinate Saño, there is enough *prima facie* evidence to support a formal charge.¹⁶

Garcia asserts that he has the authority to issue a formal charge and to order the preventive suspension of Saño arguing that CSC Resolution No. 1101502 or the Revised Rules on Administrative Cases in the Civil Service (*RRACCS*)¹⁷ repealed the SBMA's own Rules on Administrative Discipline. Pursuant to the provisions of the *RRACCS*, he is the disciplining authority and has the power to issue an order of preventive suspension.¹⁸

Finally, Garcia questions the propriety of the petition as it raises questions of fact, which is not allowed in a petition for review on *certiorari*.¹⁹

Saño submitted a reply²⁰ insisting that the formal charge is null and void *ab initio* for being issued without the benefit of a preliminary investigation, in violation of his constitutional right to due process.²¹

Issues

The Court now has to resolve two interrelated issues: First, whether the petition has been rendered moot and academic; and Second, whether or not the CA gravely abused its discretion in affirming the decision of the CSC.

Our Ruling

The petition is meritorious.

The petition has not been rendered moot and academic

A case becomes moot and academic only when there is no more actual controversy between the parties or no useful purpose can be served in passing

¹⁴ *Id.* at 58.

¹⁵ *Id.* at 575-582.

¹⁶ *Id.* at 577-578.

¹⁷ Dated November 21, 2011.

¹⁸ *Rollo*, p. 579.

¹⁹ *Id.* at 580.

²⁰ *Id.* at 560-567.

²¹ *Id.* at 561.

upon the merits of the case.²² Generally, courts decline jurisdiction over such case or dismiss it on the ground of mootness.²³

The Court had, in the past, considered that the service of the suspension will render the question on the aptness of the preventive suspension moot and academic.²⁴ However, a review of the more recent pronouncements of the Court will reveal that the previous doctrine had been abandoned.

In *Purísima v. Carpio-Morales*,²⁵ the Court did not dismiss the petitioner's petition questioning the preventive suspension imposed upon the petitioner therein since it was observed that the validity or invalidity of the preventive suspension would essentially determine his entitlement to back salaries during the six-month period therefor. The Court held that despite the lapse of the period of his preventive suspension, there remains some practical value or use in resolving his petition.

In *Ombudsman v. Capulong*,²⁶ a case quoted in *Purísima v. Carpio-Morales*,²⁷ the Court ruled that a case questioning the validity of a preventive suspension order is not mooted by the supervening lifting of the same. The relevant portion of the Court's disquisition reads:

In the instant case, the subsequent lifting of the preventive suspension order against Capulong **does not render the petition moot and academic. It does not preclude the courts from passing upon the validity of a preventive suspension order**, it being a manifestation of its constitutionally mandated power and authority to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.²⁸

In the present case, the questioned 90-day preventive suspension lapsed without an injunctive relief from a court of law. As a result of the expiration of such temporary suspension, petitioner returned to work as Senior Deputy Administrator for Business and Investment of the SBMA. From the discussions above, the issue of the propriety of the preventive suspension is still a justiciable issue despite the supervening fact of petitioner's return to work. This is because if this Court declares the suspension to be without basis, then petitioner will be entitled to his back pay.²⁹

The formal charge was issued without complying with the RRACCS

²² *Department of Trade and Industry v. Enriquez*, G.R. No. 225301, June 2, 2020.

²³ *Prof. David v. Pres. Macapagal-Arroyo*, 522 Phil. 705, 754 (2006).

²⁴ *Barrera v. People*, 474 Phil. 253, 257 (2004). See also *Radaza, et al., v. The Hon. Court of Appeals, Special 19th Div., et al.*, 590 Phil. 245, 261 (2008).

²⁵ 814 Phil. 872 (2017).

²⁶ 729 Phil. 553 (2014).

²⁷ *Supra*.

²⁸ *Supra* note 25 at 884-885.

²⁹ Section 33 of the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS), CSC Resolution No. 1701077 dated July 3, 2017.

We find that the formal charge and order of suspension were issued without complying with the requirements of the RRACCS.

It is to be noted that at the time of the issuance of the formal charge and the order of preventive suspension, it is the RRACCS that is in effect. The RRACCS covers all disciplinary cases involving government-owned or controlled corporations among other offices. The pertinent section reads:

SECTION 2. Coverage. — This Rules shall apply to all disciplinary and non-disciplinary administrative cases brought before the Civil Service Commission, agencies and instrumentalities of the National Government, local government units, and government-owned or controlled corporations with original charters except as may be provided by law.³⁰

The RRACCS outlines the procedure to be followed in the handling of administrative cases. It dedicated a rule on preliminary investigation which reads:

RULE 4

Preliminary Investigation

SECTION 15. Preliminary Investigation; Definition. — A Preliminary Investigation is a proceeding undertaken to determine whether a *prima facie* case exists to warrant the issuance of a formal charge. It involves a fact-finding investigation or an ex-parte examination of records and documents submitted by the complainant and the person/s complained of, as well as documents readily available from other government offices.

SECTION 16. How Conducted. — Within five (5) days from receipt of the complaint sufficient in form and substance, the person/s complained of shall be required to submit his/her/their counter-affidavit/comment. Where the complaint is initiated by the disciplining authority, the disciplining authority or his authorized representative shall issue a show-cause memorandum directing the person/s complained of to explain why no administrative case should be filed against him/her/them. The latter's failure to submit the comment/counter-affidavit/explanation shall be considered a waiver thereof and the preliminary investigation may be completed even without his/her counter-affidavit/comment.

If necessary, the parties may be summoned to a conference where the investigator may propound clarificatory and other relevant questions.

³⁰ The 2017 RACCS maintains the same coverage, *to wit*:

SECTION 2. Coverage. — These Rules shall apply to all disciplinary and non-disciplinary administrative cases or matters brought before the Civil Service Commission (CSC) and its regional/field offices, agencies of the national government, local government units, state universities and colleges (SUCs) or local universities and colleges (LUCs), and government-owned or controlled corporations with original charters except as may be provided by law.

Unless otherwise provided by law, rules formulated by the agencies shall not be in conflict with these Rules.

For cases filed before the Commission or any of its Regional Offices, the preliminary investigation may be entrusted to lawyers of other agencies pursuant to Section 117 of this Rules.

SECTION 17. Duration of the Investigation. — A preliminary investigation shall commence not later than five (5) days from receipt of the complaint by the disciplining authority and shall be terminated within twenty (20) days thereafter.

SECTION 18. Investigation Report. — Within five (5) days from the termination of the preliminary investigation, the investigating officer shall submit the Investigation Report with recommendation and the complete records of the case to the disciplining authority.

SECTION 19. Decision or Resolution After Preliminary Investigation. — If a *prima facie* case is established during the investigation, the disciplining authority may issue either a formal charge or a notice of charge/s pursuant to Rule 5 of this Rules. In the absence of a *prima facie* case, the complaint shall be dismissed.³¹

Rule 4 of the RRACCS, requires that when complaint is initiated by the disciplining authority, a show-cause order must be issued directing the person complained of to explain within five days upon receipt of the complaint, on why no administrative case should be filed against the said person.

³¹ The 2017 RACCS similarly provide:

RULE 4
Preliminary Investigation

SECTION 18. Preliminary Investigation; Definition. — A Preliminary Investigation is a mandatory proceeding undertaken to determine whether a *prima facie* case exists to warrant the issuance of a formal charge/notice of charge.

SECTION 19. How conducted. — Preliminary investigation may be conducted in any of the following manner: a) requiring the submission of counter affidavit or comment and/or other documents from the person complained of within five (5) days from receipt of the complaint which is sufficient in form and substance; b) ex-parte evaluation of the records; or c) clarificatory meeting with the parties to discuss the merits of the case.

When the complaint is initiated by the disciplining authority, it or its authorized representative shall issue a show-cause order directing the person complained of to explain within the same period why no administrative case should be filed against the said person. The failure to submit a comment/counter-affidavit/explanation shall be considered a waiver thereof and the preliminary investigation may be completed even without the counter-affidavit/comment/explanation.

The right to counsel may be exercised even during the preliminary investigation.

For cases filed before the Commission or any of its Regional Offices, the preliminary investigation may be entrusted to lawyers of other agencies pursuant to Section 113 of these Rules.

SECTION 20. Duration of the Preliminary Investigation. — A preliminary investigation shall commence within a non-extendible period of five (5) days upon receipt of the complaint by the disciplining authority and shall be terminated within twenty (20) days thereafter. However, the disciplining authority may extend such periods in meritorious cases.

SECTION 21. Investigation Report. — Within five (5) days from the termination of the preliminary investigation, the investigating officer/body shall submit the Investigation Report with recommendation and the complete records of the case to the disciplining authority.

The Investigation Report shall be treated with confidentiality.

SECTION 22. Decision or Resolution after Preliminary Investigation. — If a *prima facie* case is established after preliminary investigation, the disciplining authority may issue either a formal charge or a notice of charge pursuant to Rule 5 of these Rules.

In the absence of a *prima facie* case, the complaint shall be dismissed.

The RRACCS also provides that the preliminary investigation shall commence within a non-extendible period of five days upon receipt of the complaint by the disciplining authority and shall be terminated within twenty (20) days thereafter. However, the disciplining authority may extend such periods in meritorious cases.

The next step is the issuance of a formal charge. Rule 5 of the RRACCS provides that upon the termination of the preliminary investigation and there is a finding of a *prima facie* case, the disciplining authority shall formally charge the person complained of. The formal charge shall specify the charge or charges against the party respondent with a brief statement of material or relevant facts. The certified true copies of the documentary evidence, if any, sworn statements covering the testimony of witnesses shall be annexed to the formal charge. The party respondent will be directed to answer the charge or charges in writing, under oath within seventy-two (72) hours from receipt thereof.³²

Simultaneous to the issuance of the formal charge, the disciplining authority may issue an order of suspension. Rule 7 of the RRACCS outlines the procedure for the issuance of the order of suspension in this manner:

RULE 7

Preventive Suspension

SECTION 25. Preventive Suspension, Nature. — Preventive suspension is not a penalty. It is designed merely as a measure of precaution so that the official or employee charged may be removed from the scene of his/her alleged misfeasance/malfesance/nonfeasance while the same is being investigated.

SECTION 26. When Issued; Grounds. — Upon petition of the complainant or motu proprio, the proper disciplining authority may issue an order of preventive suspension upon service of the formal charge or notice of charge/s, or immediately thereafter to any subordinate officer or employee under his/her authority pending an investigation, if:

A) The charge involves:

1. Dishonesty;
2. Oppression;
3. Grave Misconduct;

³² The 2017 RACCS, has similar provisions, *to wit*:

Rule 5

Formal Charge/Notice of Charge

SECTION 23. Issuance of Formal Charge; Contents. — After a finding of a *prima facie* case, the disciplining authority shall formally charge the person complained of, who shall now be called as respondent. The formal charge shall contain a specification of charge, a brief statement of material or relevant facts, which may be accompanied by certified true copies of the documentary evidence, sworn statements covering the testimony of witnesses, a directive to answer the charge in writing, under oath in not less than three (3) days but not more than ten (10) days from receipt thereof, an advice for the respondent to indicate in the answer whether or not a formal investigation is demanded, and a notice that respondent may opt to be assisted by a counsel.

4. Neglect in the Performance of Duty;
5. Administrative offenses which are punishable by dismissal from the service on its second or third offense; or
6. If there are reasons to believe that the respondent is guilty of charges which would warrant his/her removal from the service.

B) An order of preventive suspension may be issued to temporarily remove the respondent from the scene of his/her misfeasance, malfeasance or nonfeasance to preclude the possibility of:

1. exerting undue influence or pressure on the witnesses against him/her, or
2. tampering with evidence that may be used against him/her.

C) In lieu of preventive suspension, for the same purpose, the proper disciplining authority or head of office, may reassign respondent to other unit of the agency during the formal hearings.³³

In the present case, Garcia gravely deviated from the procedure outlined in the RRACCS. Garcia issued a formal charge and order of preventive suspension charging petitioner with grave misconduct, gross neglect of duty, dishonesty and conduct prejudicial to the interest of the service without undergoing preliminary investigation. Garcia claimed that he need not conduct preliminary investigation since he personally witnessed the acts of petitioner, hence, there is already a *prima facie* case to support a formal charge.

To recapitulate, if it is the disciplining authority that initiated the administrative process, there is a need to issue a show-cause order directing the person complained of, to explain the acts complained of. Then there should be a preliminary investigation to determine whether there is a clear-cut case.

³³ The 2017 RACCS provide for similar wordings:

RULE 7

Preventive Suspension

SECTION 28. Preventive Suspension; Nature. — Preventive suspension is not a penalty. It is designed merely as a measure of precaution so that the respondent may be removed from the scene of the alleged misfeasance/malfeasance/nonfeasance while the case is being investigated.

SECTION 29. When Issued; Grounds. — The proper disciplining authority, upon motion or motu proprio, may issue an order of preventive suspension against the respondent upon issuance of the formal charge or notice of charge, or immediately thereafter, if:

A) The charge involves:

1. Dishonesty;
2. Oppression;
3. Grave Misconduct;
4. Neglect in the Performance of Duty;
5. Other offenses punishable by dismissal from the service; or
6. An administrative offense committed on its second or third instance and the penalty is dismissal from the service; and

B) The respondent is in a position to exert undue influence or pressure on the witnesses and/or tamper with evidence.

In order for a preventive suspension order to be valid, any of the conditions in Items A and B must be present.

After the determination of a *prima facie* case, a formal charge will be issued, and the person charged will be made to submit an answer. These procedural steps are anchored on protecting the constitutional right of a person charged of an administrative offense, to be heard. This is because a violation of such process raises a serious jurisdictional issue that cannot be glossed over or disregarded at will. The constitutional guarantee that no man shall be deprived of life, liberty, or property without due process is unqualified by the type of proceedings where he/she stands to lose the same.³⁴

In the present case, the procedural *faux pas* committed by Garcia consists in committing a shortcut on the administrative process by issuing a formal charge and the order of suspension without issuing a show cause order and subsequently conducting a preliminary investigation. As a result of violating the constitutional right of petitioner to due process, the formal charge and the order of preventive suspension has no legal leg to stand on. Thus, the formal charge and the order of preventive suspension are declared to be invalidly issued and without legal effect.

The invalidation of the formal charge and the order of preventive suspension would likewise result in the payment of back salaries for the period when petitioner did not receive his salaries and other benefits because of the order of preventive suspension. This is specifically provided in Section 29 of the RRACC and the updated version under Section 33 of the RACCS. The RACCS provides that back salaries should be awarded corresponding to the period of the unwarranted preventive suspension which was based on an order of preventive suspension issued without a formal charge.

For purposes of the payment of back salaries, the petitioner is given the option to have the 90 days added to his leave credits if he is still in active government service OR have the 90 days monetized at the current rate of the position he formerly occupied.

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated April 16, 2015 and Resolution dated February 4, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 131302 are hereby **REVERSED and SET ASIDE**. The formal charge and order of suspension are hereby declared invalid and without legal effect.

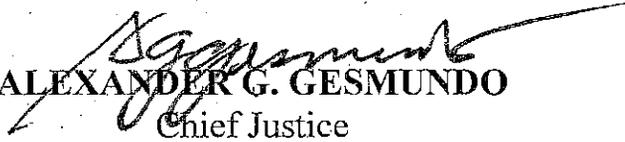
The payment of back salaries owed to Stefani C. Saño shall be either in the form of leave credits, if he is still active in government service, OR leave credits monetized at the current rate for the position he formerly occupied, at his option.

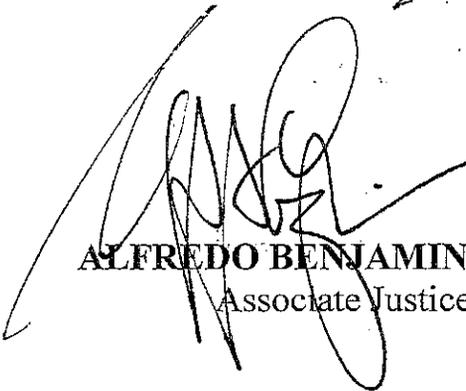
SO ORDERED.

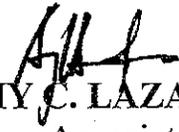
³⁴ *Supra* note 11 at 22.


JHOSEP Y. LOPEZ
 Associate Justice

WE CONCUR:


ALEXANDER G. GESMUNDO
 Chief Justice


ALFREDO BENJAMIN S. CAGUIOA
 Associate Justice


AMY C. LAZARO-JAVIER
 Associate Justice

on wellness leave
MARIO V. LOPEZ
 Associate Justice

CERTIFICATION

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