Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

CELSO OLIVIER T. DATOR,
Petitioner,

- versus -

HON. CONCHITA CARPIO-MORALES, in her capacity as the Ombudsman, and HON. GERARD A. MOSQUERA, in his capacity as the Deputy Ombudsman for Luzon, and the DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT,
Respondents.

G.R. No. 237742

Present:

LEONARDO-DE CASTRO, *C.J.*,
Chairperson,
BERSAMIN,*
DEL CASTILLO,
JARDELEZA, and
TIJAM, *JJ.*

Promulgated:

OCT 08 2018

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DECISION

TIJAM, *J.*:

Before Us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Resolution dated February 23, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 154524, denying petitioner's Petition for Injunction, with prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction.

The Antecedents

The case stemmed from a complaint[2] filed on May 2, 2016 by

* On Official Business.
[1] *Rollo*, pp. 8-31.
[2] Id. at 34-39.

complainant Moises B. Villasenor (Villasenor) against the incumbent Mayor of Lucban, Quezon, petitioner Celso Olivier T. Dator (Dator), and Maria Lyncelle D. Macandile (Macandile), also of Lucban, Quezon for grave misconduct, grave abuse of authority and nepotism.

It was alleged that in his immediately preceding term, Dator hired his sister, Macandile, as Chief Administrative Officer through a Job Order[3] and designated her as Municipal Administrator through Special Order (S.O.) No. 2, Series of 2014[4], dated March 1, 2014. There was no appointment paper that was submitted to the Sangguniang Bayan for the required confirmation pursuant to Sec. 443(d)[5] of the Local Government Code (LGC).[6]

It was also alleged that Macandile lacked the qualifications of a Municipal Administrator and her Job Order stated that "*the above-named hereby attests that he/she is not related within the third degree (fourth degree in case of LGUs) of consanguinity or affinity to the 1) hiring authority and/or 2) representatives of the hiring agency*",[7] when in truth and in fact, she is the sister of Dator.

In the Joint Counter-Affidavit of Dator and Macandile[8], they denied the charges and stated that Macandile was merely granted an authority to perform the duties and functions of an administrator in the exigency and best interest of public service. They stated that Macandile's credentials showed her competence as she worked as a Head Nurse in Ginebra San Miguel, Inc. from 1994 to 2005.[9] They further alleged that the position of Municipal Administrator did not exist in the municipality's plantilla of personnel, hence, there was no appointment paper submitted to the Sangguniang Bayan for confirmation.[10]

They also countered that the position of Municipal Administrator is primarily confidential, non-career and coterminous with the appointing authority and that the Job Order was executed for payroll purposes only. They pointed out that complainant was a former mayor of Lucban, Quezon and the said practice was done even during the complainant's administration.

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[3] Id. at 46.

[4] Id. at 32-33.

[5] SEC. 443. *Officials of the Municipal Government.*

x x x x

(d) Unless otherwise provided herein, heads of departments and offices shall be appointed by the municipal mayor with the concurrence of the majority of all the sangguniang bayan members, subject to civil service law, rules and regulations. The sangguniang bayan shall act on the appointment within fifteen (15) days from the date of its submission; otherwise, the same shall be deemed confirmed.

x x x x

[6] *Rollo*, p. 10.

[7] Id. at 46.

[8] Id. at 47-54.

[9] Id. at 56.

[10] Id. at 50-51.

They submitted copies of the Job Order forms[11] issued during the administration of the complainant, where a Dr. Palermo C. Salvacion (Dr. Salvacion) was designated as Chief Administrative Officer from 2007 to 2010.

The OMB Ruling

The Ombudsman (OMB) rendered a Decision dated March 20, 2017,[12] dismissing the charges against Macandile, but finding Dator administratively liable for Simple Misconduct.

The OMB found that Dator's act of hiring his sister without observing the regular process of appointment, and merely issuing a Job Order was irregular. It noted that since the position of Municipal Administrator was not in the plantilla, Dator should have requested the Sangguniang Bayan to create the said position through an ordinance.

It also noted that though the position of Municipal Administrator was coterminous and highly confidential in character, it was required that the appointee meet the qualifications enumerated in Section 480, Article X of the LGC.[13] It also ruled that the position did not fall within the

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[11] Id. at 63-66.

[12] Id. at 78-86.

[13] Article Ten. - The Administrator

SEC. 480. *Qualifications, Terms, Powers and Duties.* - (a) No person shall be appointed administrator unless he is a citizen of the Philippines, a resident of the local government unit concerned, of good moral character, a holder of a college degree preferably in public administration, law, or any other related course from a recognized college or university, and a first grade civil service eligible or its equivalent. He must have acquired experience in management and administration work for at least five (5) years in the case of the provincial or city administrator, and three (3) years in the case of the municipal administrator. The term of administrator is coterminous with that of his appointing authority. The appointment of an administrator shall be mandatory for the provincial and city governments, and optional for the municipal government.

(b) The administrator shall take charge of the office of the administrator and shall:

(1) Develop plans and strategies and upon approval thereof by the governor or mayor, as the case may be, implement the same particularly those which have to do with the management and administration-related programs and projects which the governor or mayor is empowered to implement and which the sanggunian is empowered to provide for under this Code;

(2) In addition to the foregoing duties and functions, the administrator shall:

(i) Assist in the coordination of the work of all the officials of the local government unit, under the supervision, direction, and control of the governor or mayor, and for this purpose, he may convene the chiefs of offices and other officials of the local government unit;

(ii) Establish and maintain a sound personnel program for the local government unit designed to promote career development and uphold the merit principle in the local government service;

(iii) Conduct a continuing organizational development of the local government unit with the end in view of instituting effective administrative reforms;

(3) Be in the frontline of the delivery of administrative support services, particularly those related to the situations during and in the aftermath of man-made and natural disasters and calamities;

(4) Recommend to the sanggunian and advise the governor and mayor, as the case may

confidential/personal staff contemplated under Section 1(e), Rule X of CSC MC No. 40, s. 1998[14] which dispenses with the eligibility and professional experience requirements.

The OMB ruled that in the issuance of the Job Order and S.O. No. 2, Series of 2014, Dator exhibited reprehensible conduct. It also found Dator's act of affixing his signature in the Job Order, which contained an attestation that Macandile is not related within the fourth degree of consanguinity to the hiring authority, despite knowledge of its falsity, is a clear transgression of the norms and standards expected of him as a government official.[15]

It disposed, thus:

> WHEREFORE, finding substantial evidence, respondent CELSO OLIVIER T. DATOR is hereby found administratively liable for Simple Misconduct and is meted the penalty of SIX (6) MONTHS SUSPENSION FROM OFFICE WITHOUT PAY pursuant to Section 10, Rule III, Administrative Order No. 07, as amended by Administrative Order No. 17 in relation to Section 25 of Republic Act No. 6770.
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> In the event that the penalty of Suspension can no longer be enforced due to respondent's separation from the service, the penalty shall be converted into a Fine in an amount equivalent to his salary for 6 months payable to the Office of the Ombudsman, and may be deductible from his retirement benefits, accrued leave credits or any receivable from his office.
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> The Honorable Secretary, the Department of the Interior and Local Government is hereby directed to implement this DECISION immediately upon receipt thereof pursuant to Section 7, Rule III of Administrative Order No. 07, as amended by Administrative Order No. 17 (Ombudsman Rules of Procedure) in relation to Memorandum Circular No. 1 series of 2006 dated April 11, 2006 and to promptly inform this Office of the action taken hereon.
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> SO ORDERED.[16]

The same was approved by Hon. Ombudsman Conchita Carpio Morales on October 11, 2017 with the footnote prescribing a shorter penalty,

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be, on all other matters relative to the management and administration of the local government unit; and

(5) Exercise such other powers and perform such other duties and functions as may be prescribed by law or by ordinance.

[14] Rule X: *Qualification Standards*

Section 1. The appointee must meet the approved qualification standards for the position for which he is being appointed. The HRMOs must be guided with the common requirements of the approved qualification standards:

x x x x

(e) Appointees to confidential/personal staff must meet only the educational requirements prescribed under CSC MC 1, s. 1997. The civil service eligibility , experience, training and other requirements are dispensed with.

[15] *Rollo,* p. 83.

[16] Id. at 84.

viz:

> WHEREFORE, finding substantial evidence, respondent CELSO OLIVIER T. DATOR is hereby found administratively liable for Simple Misconduct and is meted the penalty of ONE (1) MONTH AND ONE (1) DAY SUSPENSION FROM OFFICE WITHOUT PAY pursuant to Section 10, Rule III, Administrative Order No. 07, as amended by Administrative Order No. 17 in relation to Section 25 of Republic Act No. 6770.
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> In the event that the penalty of Suspension can no longer be enforced due to respondent's separation from the service, the penalty shall be converted into a Fine in an amount equivalent to respondent's salary for 1 month payable to the Office of the Ombudsman, and may be deductible from his retirement benefits, accrued leave credits or any receivable from his office.
>
> The Honorable Secretary of the Department of the Interior and Local Government is hereby directed to implement this DECISION immediately upon receipt thereof pursuant to Section 7, Rule III of Administrative Order No. 07, as amended by Administrative Order No. 17 (Ombudsman Rules of Procedure) in relation to Memorandum Circular No. 1 series of 2006 dated April 11, 2006 and to promptly inform this Office of the action taken hereon.
>
> SO ORDERED.[17]

A Motion for Reconsideration[18] was filed by Dator. A Supplement to the Motion for Reconsideration dated November 6, 2017[19] was likewise filed by his new counsel, in collaboration with the counsel of record, reiterating, among others, that Villasenor granted authority through similar job orders to a Dr. Salvacion as Chief Administrative Officer to perform the functions and duties appurtenant to an Administrator from 2007 to 2010. It was further pointed out that the administrative case was extinguished by the re-election of Dator in 2016 under the Aguinaldo (or condonation) Doctrine which was only abandoned in 2015 by the Supreme Court in the *Ombudsman Carpio Morales vs. CA, et al,*[20] case.

Dator also filed a Motion for Clarification[21], seeking clarification as to the correct penalty imposed – whether it is six (6) months suspension or one (1) month and one (1) day suspension.

Dator filed before the CA a Petition for Injunction with Prayer for Issuance of Preliminary Injunction and/or Temporary Restraining Order[22]

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[17] Id. at 85.
[18] Id. at 87-96.
[19] Id. at 98-127.
[20] 772 Phil. 672 (2015).
[21] *Rollo*, pp. 145-149.
[22] Id. at 150-161.

(petition for injunction), praying for respondents to desist and refrain from implementing the OMB's March 20, 2017 Decision.

The CA Ruling

In the assailed February 23, 2018 Resolution, the CA[23] denied the petition outright in this wise:

> The Petition for Injunction, with prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction, is DISMISSED on the following grounds:
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> 1. an original action for injunction (under Rule 58 of the 1997 Rules of Civil Procedure) is outside the jurisdiction of the Court of Appeals (Allgemeine Bau-Chemie Phils. Inc. vs. Metropolitan Bank, 482 SCRA 247)
> 2. the correct mode to impugn the Decision of the Ombudsman in administrative disciplinary cases is to appeal to the Court of Appeals under Rule 43 (Gupilan-Aguilar vs. Office of the Ombudsman, 717 SCRA 503)

Dator then filed with Us a Petition for Review on *Certiorari* raising the following issues:

> I. WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT RULING THAT THE AGUINALDO DOCTRINE OTHERWISE KNOWN AS THE CONDONATION DOCTRINE STILL APPLIES IN THIS CASE AT BAR.
> II. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT RULING THAT THE CONFLICTING PENALTIES METERED (sic) OUT BY THE OFFICE OF THE OMBUDSMAN WARRANTS THE ISSUANCE OF AN INJUNCTIVE WRIT.
> III. WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT GIVING DUE COURSE TO THE PETITION.

Subsequently, the OMB denied Dator's motion for reconsideration in a February 27, 2018 Order.[24] It also clarified that the seeming conflict in the proper penalty imposable on Dator was due to an honest oversight in the footnote of the OMB decision, and clarified that the penalty imposed on Dator is six months suspension without pay.

In its Comment, the Office of the Solicitor General (OSG) pointed out that Dator filed a Petition for Review with Extremely Urgent Application for Temporary Restraining Order/Status Quo Ante Order and/or Writ of Preliminary Injunction (petition for review) dated June 19, 2018[25] before the

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[23] Special Sixteenth Division comprised of Associate Justice Priscilla J. Baltazar-Padilla as Chairperson, and Associate Justices Nina G. Antonio-Valenzuela and Germano Francisco D. Legaspi as members. Id. at 175.

[24] Id. at 285-291.

[25] Id. at 255-280.

CA, assailing the March 20, 2017 Decision and February 27, 2018 Order of the OMB. It ascribed forum shopping upon Dator for filing the instant petition dated February 9, 2018 and the said petition for review dated June 19, 2018 before the CA. It highlighted that the CA was correct in dismissing the Petition for Injunction case before it, and that Dator is not entitled to any injunctive relief.

The Court's Ruling

The petition is partly meritorious.

The CA erred in not giving due course to the petition

Indeed, appeals from decisions in administrative disciplinary cases of the OMB should be taken to the CA via a Petition for Review under Rule 43 of the Rules of Court. Rule 43 prescribes the manner of appeal from quasi-judicial agencies, such as the OMB, and was formulated precisely to provide for a uniform rule of appellate procedure for quasi-judicial agencies.[26]

Although Dator filed a petition for injunction, a close scrutiny of the petition, its allegations and discussion would clearly disclose that it questioned the decision in its entirety. The CA should not have been quick to dismiss the said petition on procedural grounds alone. Given the peculiar circumstances of the case, where Dator is unsure of whether the suspension that is immediately executory is one month and one day or six months, and the resolution of his motion for clarification is still forthcoming, Dator understandably sought relief. Without further belaboring the point, We find it very clear that the extreme urgency of the situation required an equally urgent resolution, and due to the public interest involved, the petitioner is justified in straightforwardly seeking the intervention of this Court.[27]

While the Rules of Procedure must be faithfully followed, the same Rules may be relaxed for persuasive and weighty reasons to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure.[28] Again, as We repeatedly held in prior cases, the provisions of the Rules should be applied with reason and liberality to promote their objective of securing a just, speedy, and inexpensive disposition of every action and proceeding.[29]

The petition for injunction set out circumstances that merited the relaxation of the rules. It cannot be emphasized enough that the suspension

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[26] *Hon. Casimiro, et al. v. Rigor,* 749 Phil. 917, 927 (2014).
[27] *Gov. Garcia , Jr., et al. v. Court of Appeals 12th Division, et al.*, 604 Phil. 677, 693 (2009).
[28] *Meatmasters Int'l. Corp. v. Lelis Integrated Dev't. Corp.*, 492 Phil. 698, 703 (2005).
[29] *Gov. Garcia, Jr., et al. v. Court of Appeals 12th Division, et al.*, supra note 27.

from office of an elective official, whether as a preventive measure or as a penalty, will undeservedly deprive the electorate of the services of the person they have conscientiously chosen and voted into office.[30]

Forum shopping

The case of *Yamson, et al. vs. Castro, et al.,*[31] discusses the rule on forum shopping succinctly:

> The rule against forum shopping prohibits the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively for the purpose of obtaining a favorable judgment. Forum shopping may be committed in three ways: (1) **through *litis pendentia*** - filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet; 2) **through *res judicata*** - filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved; and 3) **splitting of causes of action** - filing multiple cases based on the same cause of action but with different prayers - the ground to dismiss being either *litis pendentia* or *res judicata.*[32]

A review of the petition for injunction, from which this petition for review on *certiorari* is rooted from, and the petition for review dated June 19, 2018 would reveal that the parties in both petitions are essentially the same, save for the addition of complainant Villasenor, and Sec. Eduardo M. Año, in the petition for review. Indeed, both petitions assail the March 20, 2017 Decision of the OMB finding Dator guilty of simple misconduct.

In the petition for injunction, Dator pointed out the condonation doctrine's applicability to his case and insisted that an injunctive writ should be issued primarily due to the seemingly conflicting penalty meted out in the March 20, 2017 Decision. Dator prayed for an order to immediately and completely desist and refrain from implementing the said decision.

In the petition for review, Dator questioned the immediate implementation of the suspension and insisted the application of the condonation doctrine in his case. Dator also ascribed error on the part of the OMB in finding him guilty of simple misconduct. Dator prayed for the issuance of an injunction and the reversal, annulment, and setting aside of the March 20, 2017 Decision and Order dated February 27, 2018, and prayed for the dismissal of the administrative complaint against him.

Ultimately, Dator's petition for injunction and the petition for review sought similar reliefs – which essentially constitute the review and eventual

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[30] Id. at 692.
[31] 790 Phil. 667 (2016).
[32] Id. at 692-693.

reversal of the said decision finding him guilty of simple misconduct. A resolution of the petition for injunction, which as discussed above, substantially questions the assailed decision, would result in *res judicata* to the petition for review, which likewise questions the same decision.

A finding of forum shopping, however, does not automatically render both cases dismissible. The disquisition in the case of *Yamson vs. Castro*[33] can similarly apply in this case, thus:

> Xxx. The consequences of forum shopping depend on whether the act was wilful and deliberate or not. If it is not wilful and deliberate, the subsequent cases shall be dismissed without prejudice. But if it is wilful and deliberate, both (or all, if there are more than two) actions shall be dismissed with prejudice on the ground of either *litis pendentia* or *res judicata.* In this case, the Court cannot grant the petitioners' prayer for the dismissal of the two administrative cases as there is no clear showing that the respondents' act of filing these was deliberate and wilful. Records show that these cases were premised on the two criminal complaints for Violation of Section 3(e) of R.A. No. 3019, which were separately filed and entertained by the Ombudsman. At the most, **OMB-M-A-05-104-C** (VES 15 Project), which was filed subsequent to **OMB-M-A-05-093-C** (VES 21 Project), should be, and is hereby, dismissed. [34]

Contrary to the OSG's submission, We find Dator's acts neither willful nor deliberate. As can be gleaned from the sequence of events, Dator was constrained to file an action to question the immediately executory suspension because of the seemingly conflicting penalties set out in the March 20, 2017 Decision, and the Order resolving his motion for clarification and motion for reconsideration, was only received by him on June 4, 2018. We cannot fault Dator for doing the same considering the extreme urgency of the situation, and the public interest aspect of the case. We note that Dator did not hide the fact that he had a pending petition for review on *certiorari* before this court when he filed the petition for review under Rule 43 dated June 19, 2018 with the CA.[35] Given the foregoing, We are hard-pressed to conclude that there was willful and deliberate forum shopping on the part of Dator. Be that as it may, the subsequent petition for review before the CA should be, and is hereby, dismissed.

Dator is not entitled to an injunctive writ

Dator insists that the disparity between the length of period on the penalty of suspension in the decision of the OMB penned by the Graft Investigation and Prosecution Officer II Christine Carol A. Casela-Doctor (six months suspension) and the footnoted portion of the decision below

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[33] *Yamson, et al. v. Castro, et al.*, supra note 31.

[34] Id. at 696-697.

[35] See *Rollo*, pp. 281-282.

Hon. Ombudsman Conchita Carpio-Morales' name (one month and one day suspension) results in his great disadvantage. He opines that the decision is impossible to implement because of the apparently conflicting periods which gave the implementing officers the power to arbitrarily choose between the two conflicting penalties to implement. He stresses that the difference of five months in the period of suspension is a serious length of time to consider and can put a halt on the on-going operations, projects, and programs of the petitioner as incumbent Mayor.

Dator insists that he has shown that: 1) he has a clear and unmistakable right to be informed of the correct penalty imposed against him; 2) there is a decision by the honorable respondent Office of the Ombudsman that is now immediately executory; 3) there is an urgent and paramount necessity for the issuance of the writ on the ground that the implementation of the decision would not only violate or defeat his right to be informed of the correct penalty imposed, but worse, he would be denied due process should the same be imposed now, thus, would cause him serious and irreparable damage and grave injustice; and 4) petitioner is entitled to relief because as a public officer, he has a right to be protected in his office pending the resolution of his case with the OMB.

Essential to granting the injunctive relief is the existence of an urgent necessity for the writ in order to prevent serious damage. A temporary restraining order (TRO) issues only if the matter is of such extreme urgency that grave injustice and irreparable injury would arise unless it is issued immediately. "Under Section 5, Rule 58 of the Rules of Court, a TRO may be issued only if it appears from the facts shown by affidavits or by the verified application that great or irreparable injury would be inflicted on the applicant before the writ of preliminary injunction could be heard."[36]

Thus, to be entitled to the injunctive writ, petitioner must show that: (1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by an act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.[37]

We find that Dator was unable to satisfy the said requirements as regards the showing of a clear and unmistakable right to be protected and that there is an urgent need to prevent a serious and irreparable damage.

Contrary to Dator's allegation, there is no clear and unmistakable right to be protected. There is no vested right to public office.

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[36] *Australian Professional Realty, Inc., et. al. v. Municipality of Padre Garcia Batangas Province,* 684 Phil. 283, 292 (2012).

[37] Supra note 36.

The case of *P/S Insp. Belmonte, et. al. vs. Office of the Deputy Ombudsman for the Military and other Law Enforcement Offices, etc.,*[38] is instructive on the matter:

> **The nature of appealable decisions of the Ombudsman was, in fact, settled in Ombudsman v. Samaniego, where it was held that such are immediately executory pending appeal and may not be stayed by the filing of an appeal or the issuance of an injunctive writ.**
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> x x x x
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> **Thus, petitioner Villaseñor's filing of a motion for reconsideration does not stay the immediate implementation of the Ombudsman's order of dismissal, considering that "a decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course" under Section 7.**
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> x x x x
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> The Ombudsman did not, therefore, err in implementing the orders of suspension of one year and dismissal from the service against the petitioners.
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> This may be so because, as the Court further explained, **the immediate implementation of an order of dismissal does not violate any vested right for petitioners are considered preventively suspended during their appeal**, *viz.*:
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> > The Rules of Procedure of the Office of the Ombudsman are procedural in nature and, therefore, may be applied retroactively to petitioners' cases which were pending and unresolved at the time of the passing of A.O. No. 17. **No vested right is violated by the application of Section 7 because the respondent in the administrative case is considered preventively suspended while his case is on appeal and, in the event he wins on appeal, he shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. It is important to note that there is no such thing as a vested interest in an office, or even an absolute right to hold office. Excepting constitutional offices which provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office.**
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> In view of the foregoing, therefore, the Court cannot give credence to petitioners' assertion that given the immediate effectivity of the assailed Decision, a Writ of Prohibition and Temporary Restraining Order and/or Writ of Preliminary Injunction must be issued to stay the implementation thereof. As clearly held by the Court, they have no vested right which

[38] 778 Phil. 221 (2016).

> stands to be violated by the execution of the subject decision.[39] (Underscoring Ours)

There is likewise no proof of great or irreparable injury because, as held in the above-cited case, supposing that Dator wins on appeal, he shall be paid the salary and other emoluments that he did not receive by reason of the said suspension, regardless of whether it is the one-month suspension or the six-months suspension. The damage then is quantifiable. Damages are irreparable where there is no standard by which their amount can be measured with reasonable accuracy.[40]

The condonation principle is not applicable to Dator

Contrary to the position of Dator, the condonation principle is not applicable to him.

The case of the *Office of the Ombudsman vs. Mayor Julius Cesar Vergara*[41] made a succinct discussion on the said principle and its prospective application, thus:

> In November 10, 2015, this Court, in *Conchita Carpio Morales v. CA and Jejomar Binay, Jr.*, extensively discussed the doctrine of condonation and ruled that such doctrine has no legal authority in this jurisdiction. As held in the said the (sic) decision:
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> x x x x
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> > **Reading the 1987 Constitution together with the above-cited legal provisions now leads this Court to the conclusion that the doctrine of condonation is actually bereft of legal bases.**
> >
> > To begin with, **the concept of public office is a public trust and the corollary requirement of accountability to the people at all times, as mandated under the 1987 Constitution, is plainly inconsistent with the idea that an elective local official's administrative liability for a misconduct committed during a prior term can be wiped off by the fact that he was elected to a second term of office, or even another elective post. Election is not a mode of condoning an administrative offense, and there is simply no constitutional or statutory basis in our jurisdiction to support the notion that an official elected for a different term is folly absolved of any administrative liability arising from an offense done during a prior term.** In this jurisdiction, liability arising from administrative offenses may be condoned by the

[39] Id. at 232-233.
[40] Supra note 36, at 294.
[41] G.R. No. 216871, December 6, 2017.

President in light of Section 19, Article VII of the 1987 Constitution which was interpreted in *Llamas v. Orbos* to apply to administrative offenses:

x x x x

Also, it cannot be inferred from Section 60 of the LGC that the grounds for discipline enumerated therein cannot anymore be invoked against an elective local official to hold him administratively liable once he is re-elected to office. In fact, Section 40 (b) of the LGC precludes condonation since in the first place, an elective local official who is meted with the penalty of removal could not be re-elected to an elective local position due to a direct disqualification from running for such post. In similar regard, Section 52 (a) of the RRACCS imposes a penalty of perpetual disqualification from holding public office as an accessory to the penalty of dismissal from service.

To compare, some of the cases adopted in Pascual were decided by US State jurisdictions wherein the doctrine of condonation of administrative liability was supported by either a constitutional or statutory provision stating, in effect, that an officer cannot be removed by a misconduct committed during a previous term, or that the disqualification to hold the office does not extend beyond the term in which the official's delinquency occurred. In one case, the absence of a provision against the re-election of an officer removed - unlike Section 40 (b) of the LGC-was the justification behind condonation. In another case, it was deemed that condonation through re-election was a policy under their constitution - which adoption in this jurisdiction runs counter to our present Constitution's requirements on public accountability. There was even one case where the doctrine of condonation was not adjudicated upon but only invoked by a party as a ground; while in another case, which was not reported in full in the official series, the crux of the disposition was that the evidence of a prior irregularity in no way pertained to the charge at issue and therefore, was deemed to be incompetent. Hence, owing to either their variance or inapplicability, none of these cases can be used as basis for the continued adoption of the condonation doctrine under our existing laws.

At best, Section 66 (b) of the LGC prohibits the enforcement of the penalty of suspension beyond the unexpired portion of the elective local official's prior term, and likewise allows said official to still run for reelection This treatment is similar to *People ex rel Bagshaw v. Thompson* and *Montgomery v. Novell* both cited in Pascual, wherein it was ruled that an officer cannot be suspended for a misconduct committed during a prior term. However, as previously stated, **nothing in Section 66 (b) states that the elective local official's administrative liability is**

extinguished by the fact of re-election. Thus, at all events, no legal provision actually supports the theory that the liability is condoned.

Relatedly it should be clarified that there is no truth in Pascual's postulation that the courts would be depriving the electorate of their right to elect their officers if condonation were not to be sanctioned. In political law, election pertains to the process by which a particular constituency chooses an individual to hold a public office. In this jurisdiction, there is, again, no legal basis to conclude that election automatically implies condonation. Neither is there any legal basis to say that every democratic and republican state has an inherent regime of condonation. **If condonation of an elective official's administrative liability would perhaps, be allowed in this jurisdiction, then the same should have been provided by law under our governing legal mechanisms. May it be at the time of Pascual or at present, by no means has it been shown that such a law, whether in a constitutional or statutory provision, exists. Therefore, inferring from this manifest absence, it cannot be said that the electorate's will has been abdicated.**

Equally infirm is Pascual's proposition that the electorate, when reelecting a local official, are assumed to have done so with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. Suffice it to state that no such presumption exists in any statute or procedural rule. Besides, **it is contrary to human experience that the electorate would have full knowledge of a public official's misdeeds. The Ombudsman correctly points out the reality that most corrupt acts by public officers are shrouded in secrecy, and concealed from the public. Misconduct committed by an elective official is easily covered up, and is almost always unknown to the electorate when they cast their votes. At a conceptual level, condonation presupposes that the condoner has actual knowledge of what is to be condoned. Thus, there could be no condonation of an act that is unknown.** As observed in *Walsh v. City Council of Trenton* decided by the New Jersey Supreme Court:

> Many of the cases holding that re-election of a public official prevents his removal for acts done in a preceding term of office are reasoned out on the theory of condonation. We cannot subscribe to that theory because condonation, implying as it does forgiveness, connotes knowledge and in the absence of knowledge there can be no condonation. One cannot forgive something of which one has no knowledge.

> **That being said, this Court simply finds no legal authority to sustain the condonation doctrine in this jurisdiction. As can be seen from this discourse, it was a doctrine adopted from one class of US rulings way back in 1959 and thus, out of touch from - and now rendered obsolete by - the current legal regime. In consequence, it is high time for this Court to abandon the condonation doctrine that originated from Pascual, and affirmed in the cases following the same, such as Aguinaldo, Salalima, Mayor Garcia, and Governor Garcia, Jr. which were all relied upon by the CA.**

The above ruling, however, was explicit in its pronouncement that the abandonment of the doctrine of condonation is prospective in application, hence, the same doctrine is still applicable in cases that transpired prior to the ruling of this Court in *Carpio Morales v. CA and Jejomar Binay, Jr.* thus:

> **It should, however, be clarified that this Court's abandonment of the condonation doctrine should be prospective in application for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines.** Unto this Court devolves the sole authority to interpret what the Constitution means, and all persons are bound to follow its interpretation. As explained in *De Castro v. Judicial Bar Council.*
>
> Judicial decisions assume the same authority as a statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria that must control the actuations, not only of those called upon to abide by them, but also of those duty-bound to enforce obedience to them.
>
> Hence, while the future may ultimately uncover a doctrine's error, it should be, as a general rule, recognized as "good law" prior to its abandonment. Consequently, the people's reliance thereupon should be respected. The landmark case on this matter is *People v. Jabinal,* wherein it was ruled:
>
> [W]hen a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.
>
> Later, in *Spouses Benzonan v. CA,* it was further elaborated:
>
> [Pursuant to Article 8 of the Civil Code "judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines." But while our decisions form part of the law of the land, they are also subject to Article 4 of the Civil Code which provides that "laws shall have

> no retroactive effect unless the contrary is provided." This is expressed in the familiar legal maxim lex prospicit, non respicit, the law looks forward not backward. The rationale against retroactivity is easy to perceive. The retroactive application of a law usually divests rights that have already become vested or impairs the obligations of contract and hence, is unconstitutional.
>
> Indeed, the lessons of history teach us that institutions can greatly benefit from hindsight and rectify its ensuing course. Thus, while it is truly perplexing to think that a doctrine which is barren of legal anchorage was able to endure in our jurisprudence for a considerable length of time, this Court, under a new membership, takes up the cudgels and now abandons the condonation doctrine.
>
> **Considering that the present case was instituted prior to the abovecited ruling of this Court, the doctrine of condonation may still be applied.** (Emphasis Ours)

Unlike in the said case, however, the case against Dator was instituted on May 2, 2016, or AFTER the ruling of this Court in the seminal case of *Conchita Carpio Morales vs. CA and Jejomar Erwin S. Binay, Jr.*[42]. Clearly then, the condonation principle is no longer applicable to him.

The OMB was correct in ruling that Dator is liable for simple misconduct

The OMB was correct in ruling that Dator's act of issuing the Special Order No. 2, Series of 2014 and Job Order that hired his sister, Macandile, as Chief Administrative Officer, was irregular.

A reading of the Special Order No. 2, Series of 2014 appointing Macandile would reveal that she was to undertake the functions of a municipal administrator, to wit:

> In the exigency and best interest of public service, you are hereby given a special order to perform the functions and duties appurtenant to an Administrator based on the Local Government Code of 1991, to wit:
>
> 1. Develop plans and strategies and upon approval thereof by the Mayor, implement the same particularly those which have to do with the management and administration-related programs and projects which the Mayor is empowered to provide under the Local Government Code;
>
> 2. In addition t(sic) the foregoing duties and functions, the administration (sic) shall:

[42] 772 Phil. 672 (2015).

> (i) Assist in coordination of the work of all the officials of the Local Government Unit, under the supervision, direction, and control (sic) Mayor, and for this purpose, may convene the chiefs of offices and other officials of the Local Government Unit;
> (ii) Establish and maintain a sound personnel program for the Local Government Unit designed to promote career development and uphold the merit principle in the Local Government Service;
> (iii) Conduct a continuing organizational development of the Local Government Unit with the end in view of instituting effective administrative reforms;
>
> 3. Be in frontline of the delivery of administrative support services, particularly those related to the situations during and in aftermath of man-made and natural disasters and calamities;
>
> 4. Recommend to the Sanggunian and advise (sic) Mayor, on all other matters relative to the management and administration of the Local Government Unit; and
>
> 5. Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.
>
> It is understood that your performance of duties in this special order is accompanied by an appointment which is co-terminus in nature, thus you are entitled to receive a daily wage of One Thousand Four Hundred Eight Pesos (P 1,408.00).
>
> This special order shall take effect immediately until sooner revoked with provision that this order can be renewed as per authority by the Municipal Chief Executive.
>
> For information, guidance and compliance.[43]

The exact same functions are indeed to be carried out by a municipal administrator, as set out in Sec. 480 of the Local Government Code:

> **The Administrator**
>
> **Section 480.** *Qualifications, Terms, Powers and Duties.*
>
> xxxx
>
> (b) The administrator shall take charge of the office of the administrator and shall:
>
> (1) Develop plans and strategies and upon approval thereof by the governor or mayor, as the case may be, implement the same particularly those which have to do with the management and administration-related programs and projects which the governor or mayor is empowered

[43] *Rollo*, pp. 57-58.

> to implement and which the sanggunian is empowered to provide for under this Code;
>
> (2) In addition to the foregoing duties and functions, the administrator shall:
>
> > (i) Assist in the coordination of the work of all the officials of the local government unit, under the supervision, direction, and control of the governor or mayor, and for this purpose, he may convene the chiefs of offices and other officials of the local government unit;
> >
> > (ii) Establish and maintain a sound personnel program for the local government unit designed to promote career development and uphold the merit principle in the local government service;
> >
> > (iii) Conduct a continuing organizational development of the local government unit with the end in view of the instituting effective administrative reforms;
>
> (3) Be in the frontline of the delivery of administrative support services, particularly those related to the situations during and in the aftermath of man-made and natural disasters and calamities;
>
> (4) Recommend to the sanggunian and advise the governor and mayor, as the case may be, on all other matters relative to the management and administration of the local government unit; and
>
> (5) Exercise such other powers and perform such other duties and functions as may be prescribed by law or by ordinance.

As correctly noted by the Ombudsman, the position of a Municipal Administrator is unique, because, while it is coterminous with the appointing authority and highly confidential in character, it is required that the appointee must meet the qualifications enumerated under Sec. 480[44] of the LGC. The position does not fall within the confidential/personal staff contemplated under Section 1(e)[45] Rule X of CSC MC No. 40, series of 1998 (Revised Omnibus Rules on Appointments and Other Personnel Actions

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[44] **Section 480.** *Qualifications, Terms, Powers and Duties.*

(a) No person shall be appointed administrator unless he is a **citizen of the Philippines**, a **resident of the local government unit concerned, of good moral character, a holder of a college degree preferably in public administration, law, or any other related course from a recognized college or university, and a first grade civil service eligible or its equivalent.** He must have **acquired experience in management and administration work** for at least five (5) years in the case of the provincial or city administrator, and **three (3) years in the case of the municipal administrator.**

[45] Appointees to confidential/personal staff must meet only the educational requirements prescribed under CSC MC 1, s. 1997. The civil service eligibility, experience, training and other requirements are dispensed with.

which dispenses with the eligibility and experience requirements.[46]

Further, apart from the requirements set out in Sec. 480, Sec. 443 of the LGC provides the process by which a municipal administrator ought to be appointed:

> CHAPTER 2 - *MUNICIPAL OFFICIALS IN GENERAL*
>
> SEC. 443. *Officials of the Municipal Government.* - (a) There shall be in each municipality a municipal mayor, a municipal vice-mayor, sangguniang bayan members, a secretary to the sangguniang bayan, a municipal treasurer, a municipal assessor, a municipal accountant, a municipal budget officer, a municipal planning and development coordinator, a municipal engineer/building official, a municipal health officer and a municipal civil registrar.
>
> (b) In addition thereto, **the mayor may appoint a municipal administrator**, a municipal legal officer, a municipal agriculturist, a municipal environment and natural resources officer, a municipal social welfare and development officer, a municipal architect, and a municipal information officer.
>
> (c) The sangguniang bayan may:
>
> (1) Maintain existing offices not mentioned in subsections (a) and (b) hereof;
>
> (2) Create such other offices as may be necessary to carry out the purposes of the municipal government; or
>
> (3) Consolidate the functions of any office with those of another in the interest of efficiency and economy.
>
> (d) Unless otherwise provided herein, heads of departments and offices shall be **appointed by the municipal mayor with the concurrence of the majority of all the sangguniang bayan members, subject to civil service law, rules and regulations.** The sangguniang bayan shall act on the appointment within fifteen (15) days from the date of its submission; otherwise, the same shall be deemed confirmed.
>
> (e) Elective and appointive municipal officials shall receive such compensation, allowances and other emoluments as may be determined by law or ordinance, subject to the budgetary limitations on personal services as prescribed in Title Five, Book Two of this Code: Provided, That no increase in compensation of the mayor, vice-mayor, and sangguniang bayan members shall take effect until after the expiration of the full term of all the elective local officials approving such increase.

Here, it is admitted that there was no confirmation of the appointment of Macandile by the Sangguniang Bayan precisely because there was no existing plantilla[47] for the position of municipal administrator or chief administrative officer in the local government of Lucban, Quezon. The lack of plantilla, however, cannot be used as a justification for one to be

[46] CSC Resolution No. 030128, January 28, 2003.

[47] *Rollo,* p. 61.

appointed to assume the exact functions and duties of a municipal administrator, sans the fulfillment of requisites set out in the law. What cannot be legally done directly cannot be done indirectly. This rule is basic and, to a reasonable mind, does not need explanation. Indeed, if acts that cannot be legally done directly can be done indirectly, then all laws would be illusory.[48]

Furthermore, the Civil Service Commission (CSC) came out with CSC Resolution No. 020790 (Policy Guidelines for Contract of Services) as it has been made aware that the practice of hiring personnel under contracts of service and job orders entered into between government agencies and individuals has been used to circumvent Civil Service rules and regulations particularly its mandate on merit and fitness in public service.[49]

The situation in this case is precisely what is being prevented by the said resolution where the appointing authority effectively creates a short-cut or circumvents the law as regards the determination of fitness or eligibility to a position, by merely hiring one who would otherwise have to go through the rigorous process mandated by the law, through a contract of service or job order.

CSC Resolution No. 020790 clearly states the prohibition of hiring those covered under the rules on nepotism through a contract of service and job order:

> **Section 4. Prohibitions- The following are prohibited from being hired under a contract of services and job order.**
>
> a. Those who have been previously dismissed from the service due to commission of an administrative offense;
>
> **b. Those who are covered under the rules on nepotism;**
>
> c. Those who are being hired to perform functions pertaining to

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[48] *Tawang Multi-Purpose Cooperative v. La Trinidad Water District*, 661 Phil. 390, 398 (2011).

[49] RESOLUTION NO. 020790

WHEREAS, Section 2 (1), Article IX-B of the 1987 Constitution provides that the Civil Service embraces all branches, subdivisions, instrumentalities and agencies of the Government, including government-owned or controlled corporations with original charters;

WHEREAS, Section 12 (3), Chapter 3, Title I (A), Book V of the Administrative Code of 1987 provides that the Commission shall promulgate policies, standards and guidelines for the Civil Service and adopt plans and programs to promote economical, efficient and effective personnel administration in the government;

WHEREAS, Section 12 (14), Chapter 3, Title I (A), Book V of the Administrative Code of 1987 provides that the Commission shall take appropriate action on all appointments and other personnel matters in the Civil Service;

WHEREAS, Section 1, Rule XI of the Revised Omnibus Rules on Appointments and other Personnel Actions, CSC Memorandum Circular No. 40, series of 1998, as amended by CSC Memorandum Circular No. 15, series of 1999, provides that contracts of services need not be submitted to the Commission as services rendered thereunder are not considered government service;

WHEREAS, the Commission has been made aware that the practice of hiring personnel under contracts of services and job orders entered into between government agencies and individuals has been used to circumvent Civil Service rules and regulations particularly its mandate on merit and fitness in public service.

vacant regular plantilla positions;

d. Those who have reached the compulsory retirement age except as to consultancy services.

Nepotism is defined as an appointment issued in favor of a relative within the third civil degree of consanguinity or affinity of any of the following: (1) appointing authority; (2) recommending authority; (3) chief of the bureau or office; and (4) person exercising immediate supervision over the appointee.[50] Macandile, being the sister of Dator, is clearly within the scope of the prohibition from being hired under a contract of services and job order.

A reading of the Job Order, that was approved and signed by Dator, would reveal that these prohibitions are actually written on it as well:

> The said job order shall automatically cease upon expiration as stipulated above, unless renewed. However, services of any or all of the above-named can be terminated prior to the expiration of this Job Order for lack of funds or when their services are no longer needed. The above-named hereby attests that he/she is not related within the third degree (fourth degree in case of LGUs) of consanguinity or affinity to the: 1) hiring authority and/or 2) representatives of the hiring agency; that he/she has not been previously dismissed from government service by reason of an administrative offense; that he/she has not already reached the compulsory retirement age of sixty-five (65). Furthermore, the service rendered hereunder is not considered or will never be accredited as government service.[51]

Given the foregoing, We agree with the OMB that Macandile's designation as Chief Administrative Officer was irregular as it was in clear violation of CSC Resolution No. 020790. Dator was thus properly held liable for simple misconduct.

Misconduct is "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." In Grave Misconduct, as distinguished from Simple Misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rules, must be manifested x x x.[52] Otherwise, the misconduct is only **simple**. A person charged with grave misconduct may be held liable for simple misconduct if the misconduct does not involve any of the additional elements to qualify the misconduct as grave. Grave misconduct necessarily includes the lesser offense of simple misconduct.[53] In this case, We find that none of the elements of grave misconduct were present and adequately proven.

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[50] *Civil Service Commission v. Cortes*, 734 Phil. 295, 298 (2014).

[51] *Rollo*, p. 62.

[52] *Office of the Ombudsman v. Miedes, Sr.*, 570 Phil. 464, 472-473 (2008).

[53] *Santos v. Rasalan*, 544 Phil. 35, 43 (2007).

Section 52(B)(2), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service classifies simple misconduct as a less grave offense punishable with a corresponding penalty of suspension for one month and one day to six months for the first offense.[54]

Section 54 of the same rules sets out the manner of imposition of penalty, to wit:

> Section 54. *Manner of imposition*. When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:
>
> **a. The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.**
>
> **b. The medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present.**
>
> c. The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.
>
> d. Where aggravating and mitigating circumstances are present, paragraph (a) shall be applied where there are more mitigating circumstances present; paragraph (b) shall be applied when the circumstances equally offset each other; and paragraph (c) shall be applied when there are more aggravating circumstances.[55] Emphasis Ours)

We note that Dator has shown that the previous local government administration had repeatedly appointed a Dr. Salvacion as Chief Administrative Officer through job orders. We therefore appreciate the mitigating circumstance of good faith in this case that Dator alleged in the performance of his actions. The same repeated appointment by Dr. Salvacion also negates the finding that Dator's appointment of Macandile was tainted with malice. That being said, only the minimum penalty of one month and one day suspension is appropriate.

WHEREFORE, the petition is **PARTLY GRANTED**. The Resolution dated February 23, 2018 of the Court of Appeals in CA-G.R. SP No. 154524 is hereby **REVERSED** and **SET ASIDE**. The Ombudsman's Decision dated March 20, 2017 is hereby **AFFIRMED** in so far as it finds petitioner Celso Olivier T. Dator **GUILTY** of **SIMPLE MISCONDUCT**, with modification that the petitioner is meted with the penalty of **ONE MONTH and ONE DAY SUSPENSION**. Petitioner Dator shall be entitled to his salary and such other emoluments, which he would otherwise have been entitled to, beyond the meted penalty of one month and one day suspension.

The Petition for Review assailing the Ombudsman's Decision dated

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[54] *Judge Buenaventura v. Mabalot,* 716 Phil. 476, 497 (2013).

[55] Supra, id.

March 20, 2017 and Order dated February 27, 2018 is hereby **DISMISSED** on the ground of forum shopping.

SO ORDERED.

NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Chief Justice
Chairperson

(on official business)
LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

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.

TERESITA J. LEONARDO-DE CASTRO
Chief Justice