Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

FIRST PHILIPPINE INDUSTRIAL CORPORATION, Petitioner,	**G.R. No. 179256**
	Present:
- versus -	VELASCO, JR., *J., Chairperson,* PERALTA, ABAD, MENDOZA, and LEONEN, *JJ.*
RAQUEL M. CALIMBAS and LUISA P. MAHILOM, Respondents.	**Promulgated:** JUL 10 2013

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D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Decision[1] dated March 6, 2007 and Resolution[2] dated August 16, 2007 of the Court of Appeals (*CA*) in CA-G.R. SP No. 90527.

The factual and procedural antecedents, as found by the CA, are as follows:

> Private respondent First Philippine Industrial Corporation (*FPIC*) is a domestic corporation primarily engaged in the transportation of petroleum products by pipeline. Upon the other hand, petitioners Raquel Calimbas and Luisa Mahilom were engaged by De Guzman Manpower Services ("DGMS") to perform secretarial and clerical jobs for FPIC.

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[1] Penned by Associate Justice Jose C. Reyes, Jr., with Associate Justices Jose L. Sabio, Jr. and Myrna Dimaranan Vidal, concurring; *rollo*, pp. 13-31.

[2] *Id.* at 33.

[DGMS] is engaged in the business of supplying manpower to render general clerical, building and grounds maintenance, and janitorial and utility services.

On March 29, 1993, FPIC, represented by its Senior Vice-President and Head of Administration Department, Eustaquio Generoso, Jr. entered into a Contract of Special Services with DGMS, represented by its Operations Manager, Manuel De Guzman, wherein the latter agreed to undertake some aspects of building and grounds maintenance at FPIC's premises, offices and facilities, as well as to provide clerical and other utility services as may be required from time to time by FPIC. The pertinent portions of the said Contract, which took effect on April 1, 1993, reads:

> B. Terms of Payment
>
> 1. FIRST PARTY [FPIC] shall pay the SECOND PARTY [DGMS] a contract price for services rendered based on individual timesheets prepared and submitted by the SECOND PARTY and duly authenticated by the FIRST PARTY's representative. The SECOND PARTY shall bill the FIRST PARTY on a semi-monthly basis.
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> x x x
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> C. Other Terms and Conditions
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> 1. SECOND PARTY shall undertake FIRST PARTY's projects only if covered by an approved Project Contract (Appendix-B) which the FIRST PARTY will issue to the SECOND PARTY when the need arises. The Project Contract shall indicate the scope of work to be done, duration and the manpower required to undertake the work. The composition of the workers to be assigned to a specific undertaking shall be agreed upon between the FIRST PARTY and the SECOND PARTY;
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> 2. SECOND PARTY shall assign to FIRST PARTY competent personnel to do what is required in accordance with the Project Contract. FIRST PARTY shall have the right to request for replacement of an assigned personnel who is observed to be non-productive or unsafe, and if confirmed by its own investigation and findings, SECOND PARTY shall replace such personnel;
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> 3. SECOND PARTY shall provide the maintenance equipment and tools necessary to complete assigned works. Parties hereto shall agree on the equipment, tools and supplies to be provided by SECOND PARTY prior to the start of assigned work;

> 4. SECOND PARTY shall be liable for loss and/or damage to SECOND PARTY's property, found caused by willful act or negligence of SECOND PARTY's personnel; and
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> 5. There shall be no employer-employee relationship between the FIRST PARTY, on the one hand, and the SECOND PARTY, and the person who the SECOND PARTY may assign to perform the services called for, on the other. The SECOND PARTY hereby acknowledges that no authority has been conferred upon it by the FIRST PARTY to hire any person in behalf of the FIRST PARTY. The persons who (sic) the SECOND PARTY which hereby warrants full and faithful compliance with the provisions of the Labor Code of the Philippines, as well as with all Presidential Decrees, Executive Orders, General Orders, Letter of Instructions, Law Rules and Regulations pertaining to the employment of labor now existing. SECOND PARTY shall assist and defend the FIRST PARTY in any suit or proceedings and shall hold the FIRST PARTY free and harmless from any claims which the SECOND PARTY's employees may lodge against the FIRST PARTY.
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Pursuant to the said Contract, petitioner Raquel Calimbas and Luisa Mahilom were engaged by the DGMS to render services to FPIC. Thereat, petitioner Calimbas was assigned as a department secretary at the Technical Services Department beginning June 3, 1996, while petitioner Mahilom served as a clerk at the Money Movement Section of the Finance Division starting February 13, 1996.

On June 21, 2001, FPIC, through its Human Resources Manager, Lorna Young, informed the petitioners that their services to the company would no longer be needed by July 31, 2001 as a result of the "Pace-Setting" Study conducted by an outside consultant. Accordingly, on July 9, 2001, Priscilla de Leon, Treasurer of DGMS, formally notified both the petitioners that their respective work assignments in FPIC were no longer available to them effective July 31, 2001, citing the termination of the Project Contract with FPIC as the main reason thereof. On August 3, 2001, petitioners Calimbas and Mahilom signed quitclaims, releasing and discharging DGMS from whatever claims that they might have against it by virtue of their past employment, upon receipt of the sums of ₱17,343.10 and ₱23,459.14, respectively.

Despite having executed the said quitclaims, the petitioners still filed on August 16, 2001 a Complaint against FPIC for illegal dismissal and for the collection of monetary benefits, damages and attorney's fees, alleging that they were regular employees of FPIC after serving almost five (5) years, and that they were dismissed without cause. The Complaint was docketed as NLRC NCR Case No. 00-08-04331-01 and was raffled to Labor Arbiter Joel Lustria. After conducting three (3) mandatory

> conferences, the parties failed to reach any amicable settlement; thus, they were required to submit their respective position papers, together with their documentary evidence.
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> In their Position Paper, the petitioners posited that they were regular employees of FPIC for having served the same for almost five (5) years, rendering services which were usually necessary or desirable in the usual business or trade of FPIC. They claimed that they were illegally dismissed when they were relieved from their work assignments on July 31, 2001 without valid and serious reasons therefor. The petitioners maintained and (sic) that their real employer was FPIC, and that DGMS was merely its agent for having been engaged in prohibited labor-only contracting. The petitioners averred that DGMS did not have substantial capital or investment by way of tools, equipment, machines, work places and other materials. They claimed that they only used office equipment and materials owned by FPIC at its offices in Ortigas Center, Pasig City. DGMS never exercised control over them in all matters related to the performance of their work. In fact, DGMS never maintained any representative at the FPIC's office to supervise or oversee their work. They insisted that their direct superiors, who were managerial employees of FPIC, had control over them since the latter made sure that they always complied with the policies of FPIC.
>
> Upon the other hand, FPIC insisted in its Position Paper/ Motion to Dismiss that the Complaint should be dismissed considering that the Labor Arbiter had no jurisdiction over the case because there was absolutely no employer-employee relationship between it and the petitioners. FPIC claimed that the petitioners had never been its employees. FPIC insisted that their true employer was DGMS considering that the petitioners were hired by DGMS and assigned them to the Company to render services based on their Contract; that they received their wages and other benefits from DGMS; and that they executed quitclaims in favor of DGMS. Also, FPIC submitted that the termination of the petitioners' employment with their employer, DGMS, was valid and lawful since they executed quitclaims with their employer.[3]

On December 11, 2002, the Labor Arbiter rendered a Decision[4] holding that respondents were regular employees of petitioner, and that they were illegally dismissed when their employment was terminated without just or authorized cause. The *fallo* reads:

> WHEREFORE, premises considered, let the judgment be, as it is hereby rendered, declaring complainants' dismissal illegal, and ordering the respondent, as follows:
>
> 1) To reinstate complainants to their former positions without loss of seniority rights and other privileges;
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> 2) To pay complainants, Raquel M. Calimbas the amount of **₱131,555.19**; and Luisa P. Mahilom, the

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3 *Rollo*, pp. 86-90.

4 *Id*. at 221-229.

> amount of **₱115,403.14** representing their full backwages, from the time their salaries were withheld from them up to the date of their actual reinstatement;
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> 3) To pay the complainants the amount equivalent to ten (10%) percent of the total judgment award, as and for attorney's fees.
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> The amount received by complainants, Raquel M. Calimbas in the amount of ₱17,343.10, and Luisa P. Mahilom, the amount of ₱23,459.14 under the quitclaims that they signed must be deducted from the awards herein made.
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> Other claims are hereby dismissed for lack of merit.
>
> **SO ORDERED**.[5]

Aggrieved, petitioner elevated the case to the National Labor Relations Commission (*NLRC*).

On December 22, 2003, the NLRC dismissed petitioner's appeal and upheld the Labor Arbiter's decision.

Unsatisfied, petitioner filed a Motion for Reconsideration reiterating the arguments brought up in its Position Paper/ Motion to Dismiss.

In a Resolution[6] dated April 30, 2004, the NLRC reversed its decision dated December 22, 2003 and disposed of as follows:

> After a second look, We observe that from the above-quoted issues, the Labor Arbiter assumed that complainants were regular employees of PDIC (sic) which we find erroneous.
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> First, the Contract of Special Services was signed by FPIC and DGMS on March 29, 1993 which shows that complainants' employment in February and June 1996 was pursuant to said contract which belies their submission that their working paper were forwarded by FPIC after directly employing them in February and June 1996.
>
> Second, undisputed in FPIC's statement that, capitalized at ₱75,000.00, DGMS serviced the manpower requirements of other clients like the Makati Commercial Estate Association and the Philippine Transmarine Carrier which reinforces its being an independent contractor.
>
> Third, complainants' realization that DGMS and not respondent FPIC, was their employer is shown by the fact that after they were disengaged, they went to DGMS, which paid them the amount of ₱17,343. (sic) for Calimbas and ₱23,454.14 for Mahilom.

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5 *Id.* at 228. (Emphasis in the original)

6 *Id*. at 332-339.

> We therefore find, again after a second look, at the records, that respondent First Philippine Industrial Corporation was not the employer of complainants Calimbas and Mahilom and that it was the De Guzman Manpower Services which was later on incorporated as De Guzman Manpower Corporation which was their employer. This finding, necessarily calls for the setting aside of the decision of Labor Arbiter Lustria dated December 11, 2992 (sic) and Our decision promulgated on December 22, 2003.
>
> **WHEREFORE**, as we reconsider our Decision promulgated December 22, 2003, we set aside the decision of Labor Arbiter Joel A. Lustria dated December 11, 2002 and declare respondent First Pacific (sic) Industrial Corporation free from any liability whatsoever.
>
> **SO ORDERED**.[7]

Respondents sought reconsideration of the above resolution, but the same was denied in a Resolution[8] dated April 20, 2005, maintaining that:

> We deny. We find no legal basis to deem DGMS a "labor-only contracting" entity as maintained by complainants. The fact that DGMS had only a capitalization of ₱75,000.00, without an investment in tools, equipment, etc., does not necessarily constitute the latter as labor-only contractor since it has shown its adequacy of resources, directly or indirectly, in the performance of completion of the job, work or service contracted out, including operating costs, administrative costs such as training, overhead and other costs as are necessary to enably (sic) DGMS to exercise control, supervision, or direction over its employees in all aspects in performing or completing the job, work or services contracted out. In the case of New Golden City Builders and Development Corp. et. al. vs. CA, et. al. (G.R. No. 154715), December 11, 2003), the Supreme Court reiterated its ruling in Neri that not having investment in the form of tools or machineries does not automatically reduce the independent contractor to be a labor-only contractor. Moreover, the court has taken judicial notice of the general practice adopted in several government and private institution and industries of hiring independent contractors to perform special services.
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> Furthermore, the copy of payroll adduced on record persuade us that complainants received their wages from DGMS contrary to their allegations that the contract consideration is by reimbursement of wages. The execution likewise by complainants Calimbas and Mahilom of their respective quitclaim and release fortifies the fact of their belief that their actual employer is DGMS and not respondent FPIC.
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> **WHEREFORE**, we deny the motion. We accordingly **AFFIRM** the Resolution dated April 30, 2004 in its entirety. No further motion of the same nature shall be entertained.
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> **SO ORDERED**.[9]

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7 *Id.* at 336-338. (Citations omitted)

8 *Id*. at 350-353.

9 *Id.* at 351-352. (Emphasis in the original; citation omitted)

Unfazed, respondents elevated the case before the CA.

On March 6, 2007, the CA reversed and set aside the NLRC's resolutions and held as follows:

> **WHEREFORE**, the instant Petition is hereby **GRANTED**. The assailed Resolutions dated April 30, 2004 and April 20, 2005 of the NLRC are **REVERSED** and **SET ASIDE**. The Decision dated December 22, 2003 of the NLRC, affirming the Decision dated December 11, 2002 of the Labor Arbiter is hereby **REINSTATED**.
>
> **SO ORDERED**.[10]

Petitioner filed a Motion for Reconsideration, but the same was denied in a Resolution dated August 16, 2007.

Hence, the present petition, wherein petitioner posits that:

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> THE COURT OF APPEALS COMMITTED GRIEVOUS ERROR IN NOT CONSIDERING AND APPLYING HERETO PERTINENT LAW AND JURISPRUDENCE WHICH PROVIDE THAT THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE PARTIES MUST BE SUBSTANTIALLY ESTABLISHED AND NOT MERELY PRESUMED TO EXIST.
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> II
>
> THE COURT OF APPEALS COMMITTED GRIEVOUS ERROR IN REVERSING THE UPRIGHT AND JUDICIOUS RULING OF THE NATIONAL LABOR RELATIONS COMMISSION WHICH FOUND THAT RESPONDENTS ARE NOT EMPLOYEES OF PETITIONER AND THEREFORE WERE NOT ILLEGALLY DISMISSED AND AS SUCH ARE NOT ENTITLED TO THEIR CLAIMS FOR REINSTATEMENT, BACKWAGES AND ATTORNEY'S FEES.[11]

Simply, the issues are: (1) whether respondents are employees of petitioner; and (2) whether respondents were lawfully dismissed from their employment.

Anent the first issue, Article 106 of the Labor Code pertinently provides:

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[10] *Id.* at 102. (Emphasis in the original)

[11] *Id*. at 53.

> **Article 106.** ***Contractor or subcontractor.*** – Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.
>
> In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.
>
> The Secretary of Labor may, by appropriate regulations, restrict or prohibit the contracting-out of labor to protect the rights of workers established under the Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job-contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.
>
> There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

In the same manner, Sections 8 and 9 of DOLE Department Order No. 10, Series of 1997, state:

> **Sec. 8.** ***Job contracting***. – There is job contracting permissible under the Code if the following conditions are met:
>
> (1) The contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and
>
> (2) The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business.
>
> **Sec. 9.** ***Labor-only contracting.*** –

> (a) Any person who undertakes to supply workers to an employer shall be deemed to be engaged in labor-only contracting where such person:
>
> (1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and
>
> (2) The workers recruited and placed by such persons are performing activities which are directly related to the principal or operations of the employer in which workers are habitually employed.
>
> (b) Labor-only contracting as defined herein is hereby prohibited and the person acting as contractor shall be considered merely as an agent or intermediary of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.
>
> (c) For cases not falling under this Article, the Secretary of Labor shall determine through appropriate orders whether or not the contracting out of labor is permissible in the light of the circumstances of each case and after considering the operating needs of the employer and the rights of the workers involved. In such case, he may prescribe conditions and restrictions to insure the protection and welfare of the workers.

Given the foregoing standards, we sustain the findings of the CA that respondents are petitioner's employees and that DGMS is engaged in labor-only contracting.

First, in *Vinoya v. National Labor Relations Commission*,[12] this Court categorically stated that the actual paid-in capital of ₱75,000.00 could not be considered as substantial capital. Thus, DGMS's actual paid-in capital in the amount of ₱75,000.00 does not constitute substantial capital essential to carry out its business as an independent job contractor. In spite of its bare assertion that the *Vinoya* case does not apply in the present case, DGMS has not shown any serious and cogent reason to disregard the ruling in the aforementioned case. Records likewise reveal that DGMS has no substantial equipment in the form of tools, equipment and machinery. As a matter of fact, respondents were using office equipment and materials owned by petitioner while they were rendering their services at its offices.

Second, petitioner exercised the power of control and supervision over the respondents. As aptly observed by the CA, "the daily time records of respondents even had to be countersigned by the officials of petitioner to

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[12] 381 Phil. 460, 475-476 (2000).

check whether they had worked during the hours declared therein. Furthermore, the fact that DGMS did not assign representatives to supervise over respondents' work in petitioner's company tends to disprove the independence of DGMS. It is axiomatic that the test to determine the existence of independent contractorship is whether one claiming to be an independent contractor has contracted to do the work according to his own methods and without being subjected to the control of the employer, except only to the results of the work. Obviously, on this score alone, petitioner cannot rightly claim that DGMS was an independent job contractor inasmuch as respondents were subjected to the control and supervision of petitioner while they were performing their jobs."[13]

Third, also worth stressing are the points highlighted by respondents: (1) Respondents worked only at petitioner's offices for an uninterrupted period of five years, occupying the same position at the same department under the supervision of company officials; (2) Three weeks ahead of the termination letters issued by DGMS, petitioner's HR Manager Lorna Young notified respondents, in a closed-door meeting, that their services to the company would be terminated by July 31, 2001; (3) In the termination letters prepared by DGMS, it was even stressed that the said termination letters will formalize the verbal notice given by petitioner's HR Administration personnel; (4) The direct superiors of respondents were managerial employees of petitioner, and had direct control over all the work-related activities of the latter. This control included the supervision of respondents' performance of their work and their compliance with petitioner's company policies and procedures. DGMS, on the other hand, never maintained any representative at the petitioner's office to oversee the work of respondents.[14]

All told, an employer-employee relationship exists between petitioner and respondents. And having served for almost five years at petitioner's company, respondents had already attained the status of regular employees.

As to the second issue, *i.e.*, whether respondents were lawfully dismissed from their employment, this Court rules in the negative.

Recently, in *Skippers United Pacific, Inc. v. Daza*,[15] this Court held that for a worker's dismissal to be considered valid, it must comply with both procedural and substantive due process, *viz.*:

> For a worker's dismissal to be considered valid, it must comply with both procedural and substantive due process. The legality of the

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13 *Rollo*, p. 98. (Citations omitted)

14 *Id*. at 733-734.

15 G.R. No. 175558, February 8, 2012, 665 SCRA 412.

> manner of dismissal constitutes procedural due process, while the legality of the act of dismissal constitutes substantive due process.
>
> **Procedural due process in dismissal cases consists of the twin requirements of notice and hearing. The employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first notice apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second notice informs the employee of the employer's decision to dismiss him. Before the issuance of the second notice, the requirement of a hearing must be complied with by giving the worker an opportunity to be heard. It is not necessary that an actual hearing be conducted.**
>
> **Substantive due process, on the other hand, requires that dismissal by the employer be made under a just or authorized cause under Articles 282 to 284 of the Labor Code.**[16]

In the present case, petitioners failed to show any valid or just cause under the Labor Code on which it may justify the termination of services of respondents. Also, apart from notifying that their services had already been terminated, petitioner failed to comply with the rudimentary requirement of notifying respondents regarding the acts or omissions which led to the termination of their services as well as giving them an ample opportunity to contest the legality of their dismissal. Having failed to establish compliance with the requirements of termination of employment under the Labor Code, respondents' dismissal is tainted with illegality.

Resultantly, the CA correctly held that respondents are entitled to reinstatement without loss of seniority rights, and other privileges and to their full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time their compensation was withheld up to the time of their actual reinstatement. Considering that reinstatement is no longer feasible, respondents are entitled instead to separation pay equivalent to one month salary for every year of service.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is **DENIED**. The Decision dated March 6, 2007 and Resolution dated August 16, 2007 of the Court of Appeals in CA-G.R. SP No. 90527 are hereby **AFFIRMED** with **MODIFICATION** that respondents shall be entitled to separation pay equivalent to one month salary for every year of service.

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[16] *Id*. at 426. (Emphasis supplied)

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

ROBERTO A. ABAD
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice