



SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE
RECEIVED
OCT 21 2020
BY: Henry
TIME: 9:08 am

Republic of the Philippines
Supreme Court
Manila

EN BANC

ROLANDO S. GREGORIO,
Petitioner,

G.R. No. 240778

Present:

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

- versus -

**COMMISSION ON AUDIT AND
DEPARTMENT OF FOREIGN
AFFAIRS,**

Respondents.

Promulgated:
June 30, 2020

X-----X

DECISION

CARANDANG, J.:

Challenged in this Petition for *Certiorari*¹ under Rule 64 in relation to Rule 65 of the Rules of Court is the Decision² dated February 28, 2017 and Resolution³ dated March 8, 2018 of the Commission on Audit (COA) *En Banc* in COA CP Case No. 2015-436 & 437.⁴ The COA denied the Petition for Money Claims filed by petitioner Rolando S. Gregorio for payment of salary and additional compensation; and Overseas Allowance and Living Quarters

¹ *Rollo*, pp. 3-15.

² *Id.* at 17-23.

³ *See id.* at 31.

⁴ *Id.* at 4.

9

Allowance for the period from January 1, 2005 to June 17, 2005, in the amount of ₱119,487.50 and ₱1,921,659.70, respectively, or a total amount of ₱2,041,147.20.⁵

Rolando S. Gregorio (petitioner), Chief of Mission Class II of the Department of Foreign Affairs (DFA), was the former Consul General of the Philippine Consulate General (PCG) of Honolulu, Hawaii until his retirement on April 17, 2004, at the age of 65. Upon his request, his government service was extended four times beyond his compulsory age of retirement, to wit: (1) from April 18 to June 30, 2004; (2) from July 1 to September 30, 2004; (3) from October 1 to 31, 2004; and (4) from November 1 to December 31, 2004.⁶

The request for extension of services of petitioner for the period of November 1, 2004 to December 31, 2004 was approved on October 29, 2004. Pursuant to the said approval, DFA Secretary Alberto G. Romulo (DFA Secretary Romulo) issued Assignment Order No. 42-04 stating that:⁷

The tour of duty of Consul General ROLANDO S. GREGORIO, at the Philippine Consulate General, Honolulu, is hereby finally extended from 01 October 2004 to 31 December 2004 with no further extension.⁸
(Underscoring supplied)

Starting January 2005 and onwards, documents, such as payrolls, of the PCG were signed by Consul Eva G. Betita (Consul Betita). Nonetheless, petitioner claimed that after the expiration of his service on December 31, 2004, he continued to serve as Consul General starting January 1, 2005 onwards.

In a Letter⁹ dated March 22, 2005, the DFA officially designated Consul Betita as Acting Head of Post of Honolulu pursuant to the directive of then Undersecretary for Administration, Franklin M. Ebdalin (DFA Undersecretary Ebdalin). The letter was received by CORATEL on April 1, 2005. It reads:

To : Honolulu PCG
Fr : UFME/OPAS
Re : Ms. Eva G. Betita, Acting Head of Post
Dt : 22 March 2005
Cn : HO-39-UFME-2005

Following the end of the approved extension of services of Consul Rolando Gregorio on 31 December 2004, effective 01 January 2005, Consul Eva G. Betita, FSO I, is hereby designated as Acting Head of Post.¹⁰

⁵ Id. at 17-23, 31.

⁶ Id. at 5.

⁷ Id. at 6.

⁸ Id.

⁹ Id. at 32.

¹⁰ Id.

9

On April 21, 2005, DFA Secretary Romulo, through a Memorandum for the President, recommended that the request of petitioner for extension of government service until June 30, 2005 be approved.¹¹ On May 23, 2005, the DFA received a Memorandum dated May 19, 2005 from the Executive Secretary approving petitioner's extension of services as Consul General of the Philippine Consulate in Honolulu "*until June 30, 2005 or until the arrival of his successor, whichever is earlier.*"¹²

On June 10, 2005, DFA Secretary Romulo issued a very urgent and confidential Letter¹³ instructing petitioner to return to Home Office by June 13, 2005 and to file the appropriate leaves for the days he was absent from work from January 2005.¹⁴

In a Memorandum¹⁵ dated October 18, 2005, Assistant Secretary Ophelia A. Gonzales, Office of the Personnel and Administrative Services of the DFA requested from the Assistant Secretary of Fiscal Affairs, the payment of unpaid salaries and allowances of petitioner for the approved extension of his services as Consul General from January 1, 2005 to June 30, 2005.¹⁶ The Memorandum further stated that:

In line with our request, enclosed, for your appropriate action, are copies each of the following:

1. Certificate of Last Payment x x x

x x x x

6. Approved Leave of Absence for the period from 01 April 2005 to 30 June 2005.¹⁷

On July 15, 2015, after almost 10 years, petitioner filed two Petitions for Money Claim¹⁸ before respondent COA for payment of salary and additional compensation; and Overseas Allowance and Living Quarters Allowance, for the period of January 1, 2005 to June 17, 2005 in the amounts of ₱119, 487.50 and ₱1,921,659.70, respectively, or a total amount of ₱2,041,147.20. The cases were docketed as COA CP Case No. 2015-436 to 437.¹⁹

In its Answer dated October 28, 2015, respondent DFA, through the Office of the Solicitor General (OSG), prayed that the money claim of petitioner be denied on the following grounds, to wit: (1) petitioner rendered actual service and reported for work, pursuant to approved extensions of service beyond his age of retirement, until December 31, 2004 only; (2)

¹¹ Id. at 18.
¹² Id. at 101-102.
¹³ Id. at 41.
¹⁴ Id.
¹⁵ Id. at 42.
¹⁶ Id.
¹⁷ Id.
¹⁸ Id. at 102
¹⁹ Id. at 4.

petitioner neither assumed nor continued to hold office from January to June 17, 2005, considering that the requisite approval of the President for the extension of his service was issued only on May 19, 2005, which is beyond the allowed maximum extension of one year; and (3) the effectivity of the Memorandum informing the DFA of the approval of extension of petitioner's services until June 30, 2005 cannot be made to apply on January 1, 2005 considering that Section 3 of Executive Order No. 136,²⁰ series of 1999 (E.O. No. 136) is explicit that a compulsory retired officer can neither assume nor continue in office without receipt of the requisite authority.²¹

The Audit Team Leader of the DFA, Pasay City agreed with respondent DFA. On the other hand, the Cluster Director, Cluster 1 – Executive Offices, National Government Sector (NGS) of the COA recommended that the Petition for Money Claim of petitioner be given due course on the ground that the approval of Executive Secretary Eduardo R. Ermita (Executive Secretary Ermita) of the extension of service of petitioner as an exemption from Executive Order (EO) No. 136 renders the DFA's opposition to the claim based on Sections 1, 3 and 4 of EO No. 136 ineffective. She ruled that the designation of Consul Betita as Acting Head of Post of Honolulu effective January 1, 2005 by then DFA Undersecretary Ebdalin is void since the latter had no authority to designate Consul Betita.²²

In a Decision²³ dated February 28, 2017, COA denied the petition for money claims filed by petitioner. The dispositive portion of the decision states, to wit:

WHEREFORE, premises considered, the Petitions for Money Claim of Mr. Rolando S. Gregorio, former Consul General, Philippine Consulate General, Honolulu, Hawaii, for payment of salary and additional compensation; and Overseas Allowance and Living Quarters Allowance, for the period of January 1, 2005 to June 17, 2005 in the amounts of P119,487.50 and P1,921,659.70, respectively, or a total amount of P2,041,147.20, are hereby **DENIED** for lack of merit.²⁴ (Emphasis in the original)

In denying the petition, the COA ruled that the money claim of petitioner is devoid of merit based on the following grounds. *First*, Section 3 of E.O. No. 136 provides that any officer or employee requesting retention in the service shall not be allowed to assume or continue in office pending receipt of authority from the Office of the President. The COA noted that the approved extension until June 30, 2005 pertains to the recommendation of DFA Secretary Romulo that the request of petitioner for extension until June 30, 2005 be granted. However, said request was made only on April 21, 2005 and its approval was communicated in a Memorandum dated May 19, 2005

²⁰ Requiring Presidential Approval of Requests for Extension of Services of Presidential Appointees Beyond the Compulsory Retirement Age.

²¹ *Rollo*, p. 19.

²² *Id.* at 19-20.

²³ *Supra* note 2.

²⁴ *Rollo*, p. 22.

9

of the Executive Secretary, which was received by the DFA only on May 23, 2005. The COA ruled that petitioner cannot assume or continue in office pending receipt of authority from the Office of the President and absent such authority, petitioner cannot claim benefit for the period from January 1, 2005 to June 30, 2005.²⁵

Second, Section 4 of E.O. No. 136 allows extension of government service beyond the mandatory age of retirement for a maximum of one (1) year only. The COA noted that at the time the request for extension of service was made on April 21, 2005, it was already beyond the maximum period of one (1) year from April 17, 2004. In the Memorandum of then Executive Secretary Ermita approving the extension of service of petitioner, it was expressly stated that petitioner's extension was until June 30, 2005, or until the arrival of his successor, whichever is earlier. It specifically states, to wit:

Please be advised that upon your recommendation, as an exemption to Executive Order No. 136 (series of 1999), the President has **APPROVED** the extension of service of Consul General **ROLANDO S. GREGORIO**, Chief of Mission Class II, of the Philippine Consulate General in Honolulu, Hawaii, Department of Foreign Affairs, beyond the compulsory retirement age, until June 30, 2005, or until the arrival of his successor, whichever is earlier.²⁶ (Emphasis and underscoring in the original)

Third, Section 2 of the same provision states that officials or employees who have reached the compulsory retirement age of 65 years shall not be retained in the service, except for exemplary meritorious reasons. Here, the COA noted that no documents were presented to show that petitioner's service was retained due to exemplary meritorious reasons. The COA found that petitioner's money claim is not supported with proof of actual services rendered.²⁷

Petitioner moved for reconsideration but was denied by the COA in a Resolution²⁸ dated March 8, 2018.

Hence, petitioner filed the present petition asserting that:

THE COMMISSION ON AUDIT ERRED ON A QUESTION OF LAW IN DENYING THE PETITION FOR MONEY CLAIM ON THE BASIS THAT PETITIONER DID NOT RENDER ACTUAL SERVICES FOR THE PERIOD OF JANUARY 1, 2005 UP TO JUNE 17, 2005 CONSIDERING THAT CONSUL EVA G. BETITA WAS DESIGNATED TO THE POST.²⁹

²⁵ Id. at 20-21

²⁶ Id. at 110.

²⁷ Id. at 21.

²⁸ Supra note 3.

²⁹ *Rollo*, p. 8.

9

Petitioner maintains that, contrary to the findings of the COA, he actually rendered service as the Consul General of the Philippine Consulate in Honolulu from January 1, 2005 until June 10, 2005 in a hold-over capacity.³⁰ Petitioner further contends that the designation of Consul Betita is void because it was issued by DFA Undersecretary Ebdalin, who had no authority to designate her. He asserts that the extension of a Foreign Service Officer must be approved by the President. It necessarily follows that the designation of a Foreign Service Officer must emanate from the President or, at the very least, must carry with it the *imprimatur* of the Secretary of the DFA, being an alter ego of the President. Moreover, petitioner points out that the designation of Consul Betita is dated March 22, 2005 and was officially received only on April 1, 2005. Therefore, it cannot retroact to January 1, 2005, hence, the DFA's insistence that Consul Betita assumed office as Acting Head of Post of PCG, Honolulu on January 1, 2005 is incorrect.³¹ Petitioner also claims that he is entitled to extension pursuant to Section 2 of EO No. 136 considering his exemplary services as evidenced by his commendations and citations.³² Lastly, petitioner asserts that under the doctrine of *quantum meruit*, he is entitled to his money claims.³³

In the Comment³⁴ filed by respondents COA and DFA, through the OSG, they maintain that petitioner did not discharge the function of a Consul General from January 1, 2005 in a hold-over capacity since respondent DFA designated Consul Betita as Acting Head of Post of Honolulu effective January 1, 2005; and that petitioner is not entitled to any salary, allowance and other compensation as Consul General for the said period considering that the requisite approval of the President for the extension of his service of his service was neither given nor issued.³⁵

The main issue to be resolved is whether petitioner is entitled to the payment of his money claims.

Ruling of the Court

The petition is partially granted.

Prefatorily, we note that the Constitution vests the broadest latitude in the COA in discharging its role as the guardian of public funds and properties by granting it "exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties."³⁶

³⁰ Id. at 10-11.

³¹ Id. at 8-10.

³² Id. at 11-12.

³³ Id. at 12-13.

³⁴ Id. at 102-114.

³⁵ Id. at 109.

³⁶ *Miralles v. Commission on Audit*, 818 Phil. 380, 390-391 (2017).

In recognition of such constitutional empowerment of the COA, the Court has generally sustained COA's decisions or resolutions in deference to its expertise in the implementation of the laws it has been entrusted to enforce. Only when the COA has clearly acted without or in excess of jurisdiction has the Court intervened to correct the COA's decisions or resolutions. For this purpose, grave abuse of discretion means that there is on the part of the COA an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law, such as when the assailed decision or resolution rendered is not based on law and the evidence but on caprice, whim and despotism.³⁷

In this case, we find that the COA overlooked certain facts and evidence which can affect the outcome of petitioner's money claim.

Petitioner claims payment of his salary and other compensation and overseas allowance and living quarters for the period from January 1, 2005 to June 30, 2005, when his services as Consul of the PCG of Honolulu was extended beyond his compulsory retirement.

Petitioner being a Presidential appointee, the pertinent law, E.O. No. 136, s. 1999 or the law Requiring Presidential Approval of Requests for Extension of Services of Presidential Appointees Beyond the Compulsory Retirement Age, is applicable. To quote:

Section 1. The President shall approve the extension of services of Presidential appointees beyond the compulsory retirement age, only upon recommendation by the concerned Department Secretary, unless otherwise provided by law. The extension of services of non-Presidential appointees shall be subject to the approval of the Civil Service Commission, only upon the recommendation of the concerned Department Secretary and in accordance to Executive Order No. 292, otherwise known as "The Administrative Code of 1987" and other existing laws.

Section 2. Officials or employees who have reached the compulsory retirement age of 65 years shall not be retained in the service, except for exemplary meritorious reasons.

Section 3. Any officer or employee requesting for retention in the service shall not be allowed to assume or continue in office pending receipt of authority from the Office of the President.

Section 4. Upon approval of the President, the first extension of services for Presidential appointees shall be for six (6) months, and subsequently for a second extension of six (6) months, or for a maximum extension of one (1) year only.

X X X X

³⁷

Secretary Montejo vs. Commission on Audit, G.R. No. 232272, July 24, 2018.

9

Relatedly, Section 23 of Republic Act (RA) No. 7157, otherwise known as the Philippine Foreign Service Act of 1991 provides:

Part C. Provisions of General Application to All Officers

Section 23. Compulsory Retirements. – **All officers and employees of the Department who have reached the age of sixty-five (65) shall be compulsorily and automatically retired from the Service:** provided, however, that all incumbent non-career chiefs of mission who are seventy (70) years old and above shall continue to hold office until June 30, 1992, unless sooner removed by the appointing authority. Non-career appointees who shall serve beyond the age of sixty-five (65) years shall be entitled to retirement benefits. (emphasis ours)

In order to determine whether petitioner is entitled to the payment of his salary and other money claims, we need to ascertain the following: 1) whether petitioner's extension of service beyond his compulsory retirement was authorized and approved by the Office of the President and 2) whether petitioner had actually served as Consul General for the period from January 1, 2005 to June 30, 2005.

After an assiduous review of the records, we agree with the recommendation of the Cluster Director, Cluster 1 – Executive Offices, NGS of COA that the money claims of petitioner be given due course. The Memorandum of then Executive Secretary Ermita expressly stated that petitioner's extension was until June 30, 2005, or until the arrival of his successor, whichever is earlier. It specifically states, to wit:

Please be advised that upon your recommendation, as an exemption to Executive Order No. 136 (series of 1999), the President has **APPROVED** the extension of service of Consul General **ROLANDO S. GREGORIO**, Chief of Mission Class II, of the Philippine Consulate General in Honolulu, Hawaii, Department of Foreign Affairs, beyond the compulsory retirement age, until June 30, 2005, or until the arrival of his successor, whichever is earlier. (Emphasis and underscoring supplied)

Based on the foregoing, the extension of service of petitioner beyond the compulsory retirement age was authorized and approved by the President, albeit belatedly, as the Memorandum advising the DFA of the extension was only received on May 23, 2005. Nevertheless, the petitioner's extension of service also falls within the exemption provided under Sections 3 and 4 of E.O. No. 136, since the required authorization and approval from the Office of the President retroacts to January 1, 2005 as indicated in the Memorandum of Executive Secretary Ermita dated May 19, 2005 cited above. It should also be noted that the maximum extension of service beyond the age of retirement is one year only, which, in the case of petitioner Gregorio, is only up to April 17, 2005.

Contrary to petitioner's claim that he has served as Consul General from January 1, 2005 to June 30, 2005, the records showed that on April 1,

9

2005, petitioner's successor, Consul Betita, was designated as Acting Head of Post and was deemed to have effectively and officially assumed office on the said date. However, Consul Betita's service, allegedly from January 1 to March 30, 2005, cannot be considered since her designation effective on January 1, 2005 under the DFA's letter dated March 22, 2005 cannot override the extension of service authorized by the Executive Secretary in the Memorandum dated May 19, 2005 although belatedly received on May 23, 2005.

Thus, in view of the foregoing, we find that petitioner's extension of service was effective from January 1, 2005 to March 31, 2005 only, the period where petitioner continued to assume or hold the post of Consul General, and not until June 30, 2005 as he has claimed. Petitioner has not shown that he has rendered actual services after Consul Betita has been designated as Acting Head of the PCG of Honolulu on April 1, 2005. In fact, the records would show that on March 31, 2005, a Certificate of Clearance was issued by the DFA indicating that petitioner was already cleared of money and property accountability by PCG of Honolulu. Significantly, petitioner did not report for work from April 1, 2005 to June 30, 2005, as evidenced by the Leave of Absence filed by petitioner with the Office of Personnel and Administrative Services for the said period. Therefore, petitioner is entitled to his salary and other benefits only for the period from January 1, 2005 up to March 31, 2005.

This is also in accord with the principle of *quantum meruit*, invoked by petitioner, which literally means "as much as he deserves." Under this principle a person may recover a reasonable value of the thing he delivered or the service he rendered.³⁸ The principle also acts as a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it. The principle of *quantum meruit* is predicated on equity. Here, petitioner has sufficiently established his right to be compensated for the period for which his services as Consul General was extended, from January 1, 2005 to March 31, 2005.

WHEREFORE, premises considered, the Petition for *Certiorari* filed by petitioner is hereby **PARTIALLY GRANTED**. The Decision dated February 28, 2017 and the Resolution dated March 8, 2018 of the Commission on Audit *En Banc* in COA CP Case Nos. 2015-436 & 437 are **SET ASIDE**. Petitioner Rolando S. Gregorio is entitled to the payment of his salary and additional compensation and Overseas Allowance and Living Quarters Allowance as Consul General of the Philippines in Honolulu, U.S.A., for the period from January 1, 2005 to March 31, 2005, the period of his approved extension of service.

Accordingly, this case is **REMANDED** to respondent Commission on Audit for the computation of petitioner's money claim in accordance with the foregoing.

³⁸

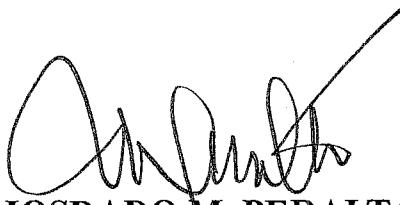
Geronimo v. COA, G.R. No. 224163, December 4, 2018.

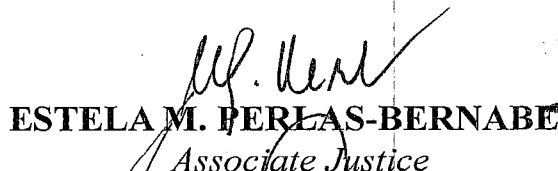
9

SO ORDERED.

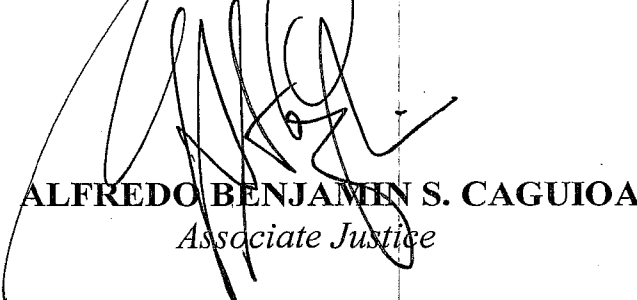

ROSMARIE D. CARANDANG
Associate Justice

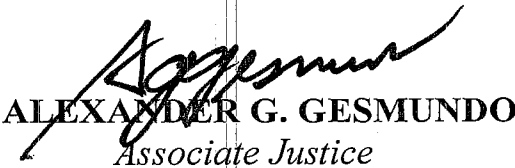
WE CONCUR:

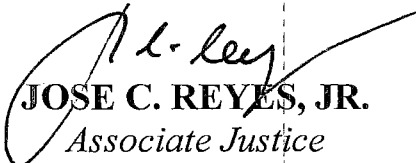

DIOSDADO M. PERALTA
Chief Justice

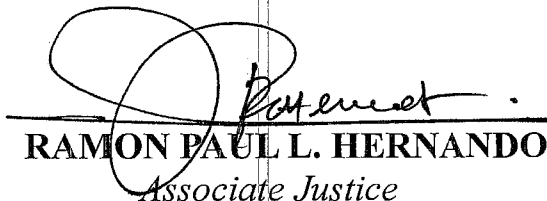

ESTELA M. PERLAS-BERNABE
Associate Justice

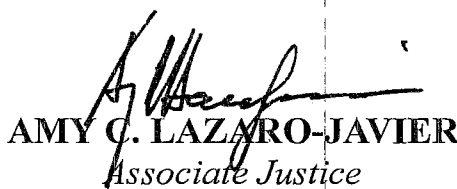

MARVIC MARIO VICTOR F. LEONEN
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

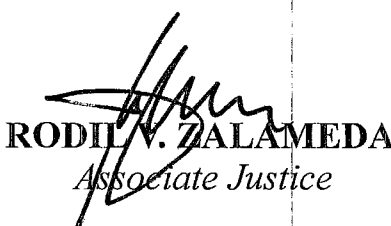

ALEXANDER G. GESMUNDO
Associate Justice

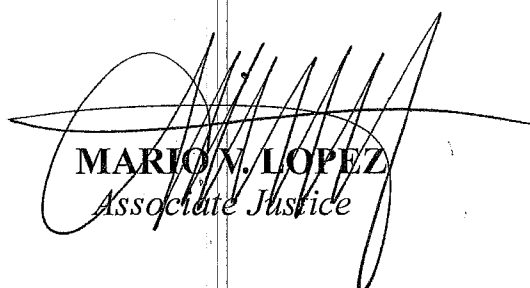

JOSE C. REYES, JR.
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


RODIL V. ZALAMEDA
Associate Justice

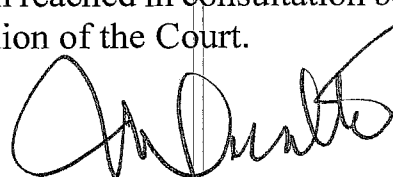

MARION N. LOPEZ
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.



DIOSDADO M. PERALTA
Chief Justice