Republic of the Philippines
Supreme Court
Manila

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
MAR 03 2016

THIRD DIVISION

ARLENE T. SAMONTE, VLADIMIR P. SAMONTE, MA. AUREA S. ELEPAÑO,
Petitioners,

-versus-

LA SALLE GREENHILLS, INC., BRO. BERNARD S. OCA,
Respondents.

G.R. No. 199683

Present:

VELASCO, ,
Chairperson,
PERALTA,
PEREZ,
REYES and
JARDELEZA, *JJ.*

Promulgated:

February 10, 2016

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DECISION

PEREZ, *J.*:

As each and all of the various and varied classes of employees in the gamut of the labor force, from non-professionals to professionals, are afforded full protection of law and security of tenure as enshrined in the Constitution, the entitlement is determined on the basis of the nature of the work, qualifications of the employee, and other relevant circumstances.

Assailed in this petition for review on *certiorari* is the Decision[1] of the Court of Appeals in C.A. G.R. SP No. 110391 affirming the Decision of the National Labor Relations Commission (NLRC) in NLRC CA No. 044835-05[2] finding that petitioners Arlene T. Samonte, Vladimir P. Samonte

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1 Penned by Associate Justice Rosalinda Asuncion-Vicente with Justices Romeo F. Barza, Edward D. Sorongon concurring, *rollo*, pp. 57-69.

2 Id. at 104-109.

and Ma. Aurea S. Elepaño were fixed-term employees of respondent La Salle Greenhills, Inc. (LSGI). The NLRC (First Division) ruling is a modification of the ruling of the Labor Arbiter that petitioners were independent contractors of respondent LSGI.[3]

The facts are not in dispute.

From 1989, and for fifteen (15) years thereafter, LSGI contracted the services of medical professionals, specifically pediatricians, dentists and a physician, to comprise its Health Service Team (HST).

Petitioners, along with other members of the HST signed uniform one-page Contracts of Retainer for the period of a specific academic calendar beginning in June of a certain year (1989 and the succeeding 15 years) and terminating in March of the following year when the school year ends. The Contracts of Retainer succinctly read, to wit:

C O N T R A C T O F R E T A I N E R

Name of Retainer _____
Address _____
Community Tax Cert. No. _____
Issued at _____ on _____
Taxpayer Identification No. (TIN) _____
Department Assigned to _____HRD-CENTRO Operation_____
Project/Undertaking (Description and Duration)
_____Health Services_____
Job Task (Description and Duration)
School [physician] from June 1, [x x x] to March 31, [x x x]
Rate _____

Conditions:

1. This retainer is only temporary in character and, as above specified, shall be solely and exclusively limited to the project/undertaking and/ or to the job/task assigned to the retainer within the said project/undertaking;

2. This retainer shall, without need of any notice to the retainer, automatically cease on the aforespecified expiration date/s of the said project/undertaking and/or the said job/task; provided, that this retainer shall likewise be deemed terminated if the said project/undertaking and/or job/task shall be completed on a date/s prior to their aforespecified expiration date/s;

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3 Id. at 244-258.

3. The foregoing notwithstanding, at any time prior to said expiration or completion date/s, La Salle Greenhills, Inc. may upon prior written notice to the retainer, terminate this contract should the retainer fail in any way to perform his assigned job/task to the satisfaction of La Salle Greenhills, Inc. or for any other just cause.

HERMAN G. ROCHESTER
Head Administrator

_____
Retainer

BELEN T. MASILUNGAN
Personnel Officer

_____
Date Signed

Signed in the Presence of:

DANTE M. FERRER
FRD Head Administrator

BRO. BERNARD S. OCA
President[4]

After fifteen consecutive years of renewal each academic year, where the last Contract of Retainer was for the school year of 2003-2004 *i.e.*, June 1, 2003 to March 31, 2004, LSGI Head Administrator, Herman Rochester, on that last day of the school year, informed the Medical Service Team, including herein petitioners, that their contracts will no longer be renewed for the following school year by reason of LSGI's decision to hire two (2) full-time doctors and dentists. One of the physicians from the same Health Service Team was hired by LSGI as a full-time doctor.

When petitioners', along with their medical colleagues', requests for payment of their separation pay were denied, they filed a complaint for illegal dismissal with prayer for separation pay, damages and attorney's fees before the NLRC. They included the President of LSGI, Bro. Bernard S. Oca, as respondent.

In their Position Paper, petitioners alleged that they were regular employees who could only be dismissed for just and authorized causes, who, up to the time of their termination, regularly received the following amounts:

1. Monthly salary for the ten-month period of a given school year:

Name	Monthly Salary
a) Jennifer A. Ramirez	Php 20,682.73

[4] CA *rollo*, pp. 234-240.

b) Brandon D. Ericta	28,603.62
c) [Petitioner] Arlene T. Samonte	20,682.73
d) [Petitioner] Vladimir P. Samonte	20,682.73
e) Alma S. Resurrecion	12,700.83
f) Ma. Socorro A. Salazar	21,117.00
g) [Petitioner] Ma. Aurea S. Elepaño	8,429.43

2. Annual 13th Month Pay equivalent to their one month salary;

3. Automatic yearly increase to their monthly salary, the rate of which is discretionary to LSGI's Executive Administrator based on a comparative rate to the across the board increase of the regular school employees which increase was subsequently reflected in their [HST'S] monthly salaries for the following school year;

4. Since 1996, as a result of the HST's request for a performance bonus, the team was likewise evaluated for a year-end performance rating by HRD-CENTRO Head Administrator, the Assistant Principal, the Health Services Team Leader and the designated Physician's Coordinator, complainant Jennifer Ramirez.

To further bolster their claim of regular employment, complainants pointed out the following in their Position Paper:

> In the course of their employment, each of the complainants served an average of nine hours a week. But beyond their duty hours, they were on call for any medical exigencies of the La Sallian community. Furthermore, over the years, additional tasks were assigned to the complainants and were required to suffer the following services/activites:
>
> a) To attend staff meetings and to participate in the formulation/adoption of policies and programs designed to enhance the School services to its constituents and to upgrade the School's standards. Complainants' involvement in Staff Meetings of the Health Services Unit of respondent school was a regular activity associated with personnel who are regular employees of an institution;

b) To participate in various gatherings and activities sponsored by the respondent school such as the Kabihasnan (the bi-annual school fair), symposiums, seminars, orientation programs, workshops, lectures, etc., including purely political activities such as the NAMFREL quick count, of which the respondent school is a staunch supporter;

c) Participation of the complainants in Medical/Dental Missions in the name of respondent school;

d) Formulation of the Health Services Unit Manual;

e) Participation in the collation of evaluation of services rendered by the Health Services Unit, as required for the continuing PAASCU (Philippine Association of Accredited Schools Colleges & Universities) accreditation of the School;

f) Participation in the yearly evaluation of complainants, which is a function of regular employees in the HRD-CENTRO Operations, of the HRD-CENTRO Head Administrator;

g) Designation of certain complainants, particularly Dr. Jennifer A. Ramirez, as member of panel of investigation to inquire into an alleged misdemeanor of a regular employee of respondent school; and

h) Regular inspection of the canteen concessionaire and the toilet facilities of the school premises to insure its high standards of sanitation.

Complainants were likewise included among so-called members of the "LA SALLIAN FAMILY: Builder of a Culture of Peace," under the heading "Health Services Team" of the La Salle Green Hills High School Student Handbook 2003-2004. Such public presentation of the complainants as members of the "LA SALLIAN FAMILY" leaves no doubt about the intent of respondent school to project complainants as part of its professional staff.[5]

On the other hand, in their Position Paper,[6] LSGI denied that complainants were regular employees, asserting that complainants were independent contractors who were retained by LSGI by reason of their medical skills and expertise to provide ancillary medical and dental services to both its students and faculty, consistent with the following circumstances:

1. Complainants were professional physicians and dentists on retainer basis, paid on monthly retainer fees, not regular salaries;

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5 Id. at 195-209.
6 Id. at 210-229.

2. LSGI had no power to impose disciplinary measures upon complainants including dismissal from employment;

3. LSGI had no power of control over how complainants actually performed their professional services.

In the main, LSGI invoked the case of *Sonza v. ABS-CBN*[7] to justify its stance that complainants were independent contractors and not regular employees citing, thus:

> SONZA contends that ABS-CBN exercised control over the means and methods of his work.
>
> SONZA's argument is misplaced. ABS-CBN engaged SONZA's services specifically to co-host the "Mel & Jay" programs. ABS-CBN did not assign any other work to SONZA. To perform his work, SONZA only needed his skills and talent. How SONZA delivered his lines, appeared on television, and sounded on radio were outside ABS-CBN's control. SONZA did not have to render 8 hours of work per day. The Agreement required SONZA to attend only rehearsals and tapings of the shows, as well as pre and post-production staff meetings. ABS-CBN could not dictate the contents of SONZA's script. However, the Agreement prohibited SONZA from criticising in his shows ABS-CBN or its interests. The clear implication is that SONZA had a free hand on what to say or discuss in his shows provided he did not attack ABS-CBN or its interests.

As previously adverted, the Labor Arbiter dismissed petitioners' (and their colleagues') complaint and ruled that complainants, as propounded by LSGI, were independent contractors under retainership contracts and never became regular employees of LSGI. The Labor Arbiter based its over-all finding of the absence of control by LSGI over complainants on the following points:

1. The professional services provided by complainants, including herein petitioners, cannot be considered as necessary to LSGI's business of providing primary and secondary education to its students.

2. The payslips of complainants are not salaries but professional fees less taxes withheld for the medical services they provided;

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7 G.R. No. 138051, June 10, 2004.

3. Issuance of identification cards to, and the requirement to log the time-in and time-out of, complainants are not indicia of LSGI's power of control over them but were only imposed for security reasons and in compliance with the agreed clinic schedules of complainants at LSGI premises.

4. In contrast to regular employees of LSGI, complainants: (a) were not required to attend or participate in school-sponsored activities and (b) did not enjoy benefits such as educational subsidy for their dependents.

5. On this score alone, complainants' respective clinic schedule at LSGI for two (2) to three (3) days a week for three (3) hours a day, for a maximum of nine (9) hours a week, was not commensurate to the required number of hours work rendered by a regular employee in a given week of at least 40 hours a week or 8 hours a day for five (5) days. In addition, the appointed clinic schedule was based on the preference of complainants.

Curiously, despite the finding that complainants were independent contractors and not regular employees, the Labor Arbiter, on the ground of compassionate social justice, awarded complainants separation pay at the rate of one-half month salary for every year of service:

Separately, both parties, complainants, including herein petitioners, and respondents appealed to the NLRC.

At the outset, the NLRC disagreed with the Labor Arbiter's ruling that complainants were independent contractors based on the latter's opinion that the services rendered by complainants are not considered necessary to LSGI's operation as an educational institution. The NLRC noted that Presidential Decree No. 856, otherwise known as the Sanitation Code of the Philippines, requires that private educational institutions comply with the sanitary laws. Nonetheless, the NLRC found that complainants were fixed-period employees whose terms of employment were subject to agreement for a specific duration. In all, the NLRC ruled that the Contracts of Retainer between complainants and LSGI are valid fixed-term employment contracts where complainants as medical professionals understood the terms thereof when they agreed to such continuously for more than ten (10) years. Consequently, the valid termination of their retainership contracts at the end of the period stated therein, did not entitle complainants to reinstatement, nor, to payment of separation pay.

At this point, only herein petitioners, filed a petition for *certiorari* under Rule 65 of the Rules of Court before the Court of Appeals alleging that grave abuse of discretion attended the ruling of the NLRC that they were not regular employees and thus not entitled to the twin remedies of reinstatement to work with payment of full backwages or separation pay with backwages.

In dismissing the petition for *certiorari*, the appellate court ruled that the NLRC did not commit an error of jurisdiction which is correctible by a writ of *certiorari*. The Court of Appeals found that the NLRC's ruling was based on the Contracts of Retainer signed by petitioners who, as professionals, supposedly ought to have known the import of the contracts they voluntarily signed, *i.e.* (a) temporary in character; (b) automatically ceasing on the specified expiration date, or (c) likewise deemed terminated if job/task shall be completed on a date prior to specified expiration date.

The Court of Appeals ruled against petitioners' claim of regular employment, thus:

> Moreover, this Court is not persuaded by petitioners' averments that they are regular employees simply because they received benefits such as overtime pay, allowances, Christmas bonuses and the like; or because they were subjected to administrative rules such as those that regulate their time and hours of work, or subjected to LSGI's disciplinary rules and regulations; or simply because they were treated as part of LSGI's professional staff. It must be emphasised that LSGI, being the employer, has the inherent right to regulate all aspects of employment of every employee whether regular, probationary, contractual or fixed-term. Besides, petitioners were hired for specific tasks and under fixed terms and conditions and it is LSGI's prerogative to monitor their performance to see if they are doing their tasks according to the terms and conditions of their contract and to give them incentives for good performance.[8]

Hence, this petition for review on *certiorari* raising the following issues for resolution of the Court:

> I. WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT PETITIONERS WERE FIXED-PERIOD EMPLOYEES AND NOT REGULAR EMPLOYEES OF LSGI.

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8 *Rollo*, p. 66.

II. WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT HAVING RULED THAT PETITIONERS WERE ILLEGALLY DISMISSED FROM WORK.

III. WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT HAVING RULED THAT PETITIONERS ARE ENTITLED TO REINSTATEMENT, BACKWAGES AND OTHER MONETARY BENEFITS PROVIDED BY LAW, MORAL AND EXEMPLARY DAMAGES, AS WELL AS ATTORNEY'S FEES.

IV. WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT HAVING RULED THAT RESPONDENTS ARE SOLIDARILY LIABLE AS THEY ACTED IN BAD FAITH AND WITH MALICE IN DEALING WITH THE PETITIONERS.[9]

The pivotal issue for resolution is whether the Court of Appeals correctly ruled that the NLRC did not commit grave abuse of discretion in ruling that petitioners were not regular employees who may only be dismissed for just and authorized causes.

Our inquiry and disposition will delve into the kind of employment relationship between the parties, such employment relationship having been as much as admitted by LSGI and then ruled upon categorically by the NLRC and the appellate court which both held that petitioners were fixed-term employees and not independent contractors.

Article 280 of the Labor Code classifies employees into regular, project, seasonal, and casual:

> **Art. 280. Regular and casual employment.** The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered

[9] Id. at 21.

> at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

The provision classifies regular employees into two kinds (1) those "engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer"; and (2) casual employees who have "rendered at least one year of service, whether such service is continuous or broken."

The NLRC correctly identified the existence of an employer-employee relationship between petitioners and LSGI and not a bilateral independent contractor relationship. On more than one occasion, we recognised certain workers to be independent contractors: individuals with unique skills and talents that set them apart from ordinary employees.[10] We found them to be independent contractors because of these unique skills and talents and the lack of control over the means and methods in the performance of their work. In some instances, doctors and other medical professional may fall into this independent contractor category, legitimately providing medical professional services. However, as has been declared by the NLRC and the appellate court, petitioners herein are not independent contractors.

We need to examine next the ruling of the NLRC and the Court of Appeals that petitioners were fixed-term employees.

To factually support such conclusion, the NLRC solely relied on the case of *Brent v. Zamor*[11] and perfunctorily noted that petitioners, professional doctors and dentists, continuously signed the contracts for more than ten (10) years. Such was heedless of our prescription that the ruling in *Brent* be strictly construed, applying only to cases where it appears that the employer and employee are on equal footing. Observably, nowhere in the two and half page ratiocination of the NLRC was there reference to the standard that "it [should] satisfactorily appear that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former on the latter."

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10 *Orozco v. Court of Appeals et al.*, 584 Phil. 35 [2008; *Seblante et al. v. Court of* Appeals, 671 Phil. 213 (2011); *Bernarte v. Philippine Basketball Association*, 673 Phil. 384 (2011); *Sonza, v. Court of Appeals*. G.R. No. 138051, June 10, 2004.

11 260 Phil. 747 (1990).

From *Brent,* which remains as the exception rather than the rule in the determination of the nature of employment, we are schooled that there are employment contracts where a "fixed term is an essential and natural appurtenance" such as overseas employment contracts and officers in educational institutions. We learned thus:

> [T]he decisive determinant in the term employment contract should not be the activities that the employee is called upon to perform, but the day certain agreed upon by the parties for the commencement and termination of their employment relationship, a day certain being understood to be "that which must necessarily come, although it may not be known when.
>
> xxx
>
> Accordingly, and since the entire purpose behind the development of legislation culminating in the present Article 280 of the Labor Code clearly appears to have been, as already observed, to prevent circumvention of the employee's right to be secure in his tenure, the clause in said article indiscriminately and completely ruling out all written or oral agreements conflicting with the concept of regular employment as defined therein should be construed to refer to the substantive evil that the Code itself has singled out: agreements entered into precisely to circumvent security of tenure. It should have no application to instances where a fixed period of employment was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter.

Tersely put, a fixed-term employment is allowable under the Labor Code only if the term was voluntarily and knowingly entered into by the parties who must have dealt with each other on equal terms not one exercising moral dominance over the other.

Indeed, *Price, et. al. v. Innodata Corp.*, teaches us, from the wording of Article 280 of the Labor Code, that the nomenclature of contracts, especially employment contracts, does not define the employment status of a person: Such is defined and prescribed by law and not by what the parties say it should be. Equally important to consider is that a contract of employment is impressed with public interest such that labor contracts must yield to the common good. Thus, provisions of applicable statutes are deemed written into the contract, and the parties are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply contracting with each other.

Further, a fixed-term contract is an employment contract, the repeated renewals of which make for a regular employment. In *Fuji Network Television v. Espiritu,*[12] we noted that Fuji's argument that Espiritu was an independent contractor under a fixed-term contract is contradictory where employees under fixed-term contracts cannot be independent contractors because in fixed-term contracts, an employer-employee relationship exists. Significantly, we ruled therein that Espiritu's contract indicating a fixed term did not automatically mean that she could never be a regular employee which is precisely what Article 280 of the Labor Code sought to avoid. The repeated renewal of Espiritu's contract coupled with the nature of work performed pointed to the regular nature of her employment despite contrary claims of Fuji and the nomenclature of the contract. Citing *Dumpit-Murillo v. Court of Appeals*[13] and *Philips Semiconductors, Inc. v. Fadriquela*,[14] we declared in *Fuji* that the repeated engagement under contract of hire is indicative of the necessity and desirability of the [employee's] work in respondent's business and where employee's contract has been continuously extended or renewed to the same position, with the same duties and remained in the employ without any interruption, then such employee is a regular employee.

In the case at bar, the Court of Appeals disregarded the repeated renewals of the Contracts of Retainer of petitioners spanning a decade and a half. The Court of Appeals ruled that petitioners never became regular employees:

> [T]his Court is not persuaded by petitioners' averments that they are regular employees simply because they received benefits such as overtime pay, allowances, Christmas bonuses and the like; or because they were subjected to administrative rules such as those that regulate their time and hours of work, or subjected to LSGI's disciplinary rules and regulations; or simply because they were treated as part of LSGI's professional staff. It must be emphasised that LSGI, as the employer, has the inherent right to regulate all aspects of employment of every employee whether regular, probationary, contractual or fixed-term. Besides, petitioners were hired for specific tasks and under fixed terms and conditions and it is LSGI's prerogative to monitor their performance to see if they are doing their tasks according to the terms and conditions of their contract and to give them incentives for good performance.[15]

We completely disagree with the Court of Appeals.

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12 G.R. Nos. 204944-45, December 3, 2014.
13 551 Phil. 725 (2007).
14 471 Phil. 355 (2004).
15 *Rollo*, p. 66

The uniform one-page Contracts of Retainer signed by petitioners were prepared by LSGI alone. Petitioners, medical professionals as they were, were still not on equal footing with LSGI as they obviously did not want to lose their jobs that they had stayed in for fifteen (15) years. There is no specificity in the contracts regarding terms and conditions of employment that would indicate that petitioners and LSGI were on equal footing in negotiating it. Notably, without specifying what are the tasks assigned to petitioners, LSGI "may upon prior written notice to the retainer, terminate [the] contract should the retainer fail in any way to perform his assigned job/task to the satisfaction of La Salle Greenhills, Inc. or for any other just cause."[16]

While vague in its sparseness, the Contract of Retainer very clearly spelled out that LSGI had the power of control over petitioners.

Time and again we have held that the power of control refers to the existence of the power and not necessarily to the actual exercise thereof, nor is it essential for the employer to actually supervise the performance of duties of the employee.[17] It is enough that the employer has the right to wield that power.

In all, given the following: (1) repeated renewal of petitioners' contract for fifteen years, interrupted only by the close of the school year; (2) the necessity of the work performed by petitioners as school physicians and dentists; and (3) the existence of LSGI's power of control over the means and method pursued by petitioners in the performance of their job, we rule that petitioners attained regular employment, entitled to security of tenure who could only be dismissed for just and authorized causes. Consequently, petitioners were illegally dismissed and are entitled to the twin remedies of payment of separation pay and full back wages. We order separation pay in lieu of reinstatement given the time that has lapsed, twelve years, in the litigation of this case.

We clarify, however, that our ruling herein is only confined to the three (3) petitioners who had filed this appeal by *certiorari* under Rule 45 of the Rules of Court, and prior thereto, the petition for *certiorari* under Rule 65 thereof before the Court of Appeals. The Decision of the NLRC covering other complainants in NLRC CA No. 044835-05 has already become final and executory as to them.

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16 Id. at 65.

17 *Corporal Sr. v. National Labor Relations Commission*, 395 Phil. 980 (2000).

Not being trier of facts, we remand this case to the NLRC for the determination of separation pay and full back wages from the time petitioners were precluded from returning to work the school year 2004 and compensation for work performed in that period.

WHEREFORE, the petition is **GRANTED**. The Decision of the Court of Appeals in CA G.R. SP No. 110391 is **REVERSED AND SET ASIDE**. The Decisions of the NLRC in NLRC CA No. 044835-05 and NLRC CASE No. 00-0607081-04 are **ANNULLED AND SET ASIDE**. The Complaint of petitioners Arlene T. Samonte, Vladimir P. Samonte, Ma. Carmen Aurea S. Elepano against La Salle Greenhills, Inc. for illegal dismissal is **GRANTED**. We **REMAND** this case to the NLRC for the computation of the three (3) petitioners' separation pay and full back wages.

No pronouncement as to costs.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusion in the above Decision were 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, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
MAR 03 2016

MARIA LOURDES P. A. SERENO
Chief Justice