

**HON. ARMAND FABELLA, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF EDUCATION, CULTURE AND SPORTS; DR. NILO ROSAS, IN HIS CAPACITY AS REGIONAL DIRECTOR, DECS-NCR; DR. BIENVEN...**

*G.R. No. 110379. November 28, 1997*

Ponente: PANGANIBAN, J.

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**PANGANIBAN, J.:**

Due process of law requires notice and hearing. Hearing, on the other hand, presupposes a competent and impartial tribunal. The right to be heard and, ultimately, the right to due process of law lose meaning in the absence of an independent, competent and impartial tribunal.

**Statement of the Case**

This principium is explained by this Court as it resolves this petition for review on certiorari assailing the May 21, 1993 Decision[1] of the Court of Appeals[2] in CA-G.R. SP No. 29107 which affirmed the trial court's decision,[3] as follows:

“WHEREFORE, the decision appealed from is AFFIRMED and the appeal is DISMISSED.

The Hon. Armand Fabella is hereby ORDERED substituted as respondent-appellant in place of former Secretary Isidro Cariño and henceforth this fact should be reflected in the title of this case.

SO ORDERED.”[4]

**The Antecedent Facts**

The facts, as found by Respondent Court, are as follows:

“On September 17, 1990, then DECS Secretary Cariño issued a return-to-work order to all public school teachers who had participated in talk-outs and strikes on various dates during the period September 26, 1990 to October 18, 1990. The mass action had been staged to demand payment of 13th month differentials, clothing allowances and passage of a debt-cap bill in Congress, among other things.

On October 18, 1990, Secretary Cariño filed administrative cases against herein petitioner-appellees, who are teachers of the Mandaluyong High School. The charge sheets required petitioner-appellees to explain in writing why they should not be punished for having taken part in the mass action in violation of civil service laws and regulations, to wit:

1. grave misconduct;
2. gross neglect of duty;
3. gross violation of Civil Service Law and rules on reasonable office regulations;

4. refusal to perform official duty;
5. conduct prejudicial to the best interest of the service;
6. absence without leave (AWOL)

At the same time, Secretary Cariño ordered petitioner-appellee to be placed under preventive suspension.

The charges were subsequently amended by DECS-NCR Regional Director Nilo Rosas on November 7, 1990 to include the specific dates when petitioner-appellees allegedly took part in the strike.

Administrative hearings started on December 20, 1990. Petitioner-appellees' counsel objected to the procedure adopted by the committee and demanded that he be furnished a copy of the guidelines adopted by the committee for the investigation and imposition of penalties. As he received no response from the committee, counsel walked out. Later, however, counsel, was able to obtain a copy of the guidelines.

On April 10, 1991, the teachers filed a an injunctive suit (Civil Case No. 60675) with the Regional Trial Court in Quezon City, charging the committee appointed by Secretary Cariño with fraud and deceit and praying that it be stopped from further investigating them and from rendering any decision in the administrative case. However, the trial court denied them a restraining order.

They then amended their complaint and made it one for certiorari and mandamus. They alleged that the investigating committee was acting with grave abuse of discretion because its guidelines for investigation place the burden of proof on them by requiring them to prove their innocence instead of requiring Secretary Cariño and his staff to adduce evidence to prove the charges against the teachers.

On May 30, 1991, petitioner-appellee Adriano S. Valencia of the Ramon Magsaysay High School filed a motion to intervene, alleging that he was in the same situation as petitioners since he had likewise been charged and preventively suspended by respondent-appellant Cariño for the same grounds as the other petitioner-appellees and made to shoulder the burden of proving his innocence under the committee's guidelines. The trial court granted his motion on June 3, 1991 and allowed him to intervene.

On June 11, 1991, the Solicitor General answered the petitioner for certiorari and mandamus in behalf of respondent DECS Secretary. In the main he contended that, in accordance with the doctrine of primary resort, the trial court should not interfere in the administrative proceedings.

The Solicitor General also asked the trial court to reconsider its order of June 3, 1991, allowing petitioner-appellee Adriano S. Valencia to intervene in the case.

Meanwhile, the DECS investigating committee rendered a decision on August 6, 1991, finding the petitioner-appellees guilty, as charged and ordering their immediate dismissal.

On August 15, 1991, the trial court dismissed the petition for certiorari and mandamus for lack of merit. Petitioner-appellees moved for a reconsideration, but their motion was denied on September 11, 1991.

The teachers then filed a petition for certiorari with the Supreme Court which, on February 18, 1992, issued a resolution en banc declaring void the trial court's order of dismissal and reinstating petitioner-appellees' action, even as it ordered the latter's reinstatement pending decision of their case.

Accordingly, on March 25, 1992, the trial court set the case for hearing. June 8, 1992, it issued a pre-trial order which reads:

“As prayed for by Solicitor Bernard Hernandez, let this case be set for pre-trial conference on June 17, 1992 at

1:30 p.m., so as to expedite the proceedings hereof. In which case, DECS Secretary Isidro Cariño, as the principal respondent, is hereby ordered to PERSONALLY APPEAR before this Court on said date and time, with a warning that should he fail to show up on said date, the Court will declare him as IN DEFAULT. Stated otherwise, for the said Pre-Trial Conference, the Court will not recognize any representative of his.”

By agreement of the parties, the trial conference was reset on June 26, 1992. However, Secretary Cariño failed to appear in court on the date set. It was explained that he had to attend a conference in Maragondon, Cavite. Instead, he was represented by Atty. Reno Capinpin, while the other respondents were represented by Atty. Jocelyn Pili. But the court just the same declared them as in default. The Solicitor General moved for a reconsideration, reiterating that Cariño could not personally come on June 26, 1992 because of prior commitment in Cavite. It was pointed out that Cariño was represented by Atty. Reno Capinpin, while the other respondents were represented by Atty. Jocelyn Pili, both of the DECS-NCR and that both had special powers of attorney. But the Solicitor General’s motion for reconsideration was denied by the trial court. In its order of July 15, 1992, the court stated:

“The “Motion For Reconsideration” dated July 3, 1992 filed by the respondents thru counsel, is hereby DENIED for lack of merit. It appears too obvious that respondents simply did not want to comply with the lawful orders of the Court.

The respondents having lost their standing in Court, the “Manifestation and Motion,” dated July 3, 1992 filed by the Office of the Solicitor General is hereby DENIED due course.

SO ORDERED.”

On July 3, 1992, the Solicitor General informed the trial court that Cariño had ceased to be DECS Secretary and asked for his substitution. But the court failed to act on his motion.

The hearing of the case was thereafter conducted ex parte with only the teachers allowed to present their evidence.

On August 10, 1992, the trial court rendered a decision, in which it stated:

“The Court is in full accord with petitioners’ contention that Rep. Act No. 4670 otherwise known as the “Magna Carta for Public School Teachers” is the primary law that governs the conduct of investigation in administrative cases filed against public school teachers, with Pres. Decree No. 807 as its supplemental law. Respondents erred in believing and contending that Rep. Act. No. 4670 has already been superseded by the applicable provisions of Pres. Decree No. 807 and Exec. Order No. 292. Under the Rules of Statutory Construction, a special law, Rep. Act. No. 4670 in the case at bar, is not regarded as having been replaced by a general law, Pres. Decree No. 807, unless the intent to repeal or alter the same is manifest. A perusal of Pres. Decree No. 807 reveals no such intention exists, hence, Rep. Act No. 4670 stands. In the event that there is conflict between a special and a general law, the former shall prevail since it evidences the legislator’s intent more clearly than that of the general statute and must be taken as an exception to the General Act. The provision of Rep. Act No. 4670 therefore prevails over Pres. Decree No. 807 in the composition and selection of the members of the investigating committee. Consequently, the committee tasked to investigate the charges filed against petitioners was illegally constituted, their composition and appointment being violative of Sec. 9 of Rep. Act. No. 4670 hence all acts done by said body possess no legal color whatsoever.

Anent petitioners’ claim that their dismissal was effected without any formal investigation, the Court, after consideration of the circumstances surrounding the case, finds such claim meritorious. Although it cannot be gain said that respondents have a cause of action against the petitioner, the same is not sufficient reason to detract from the necessity of basic fair play. The manner of dismissal of the teachers is tainted with illegality. It is a dismissal without due process. While there was a semblance of investigation conducted by the respondents their intention to dismiss petitioners was already manifest when it adopted a procedure provided for by law, by

shifting the burden of proof to the petitioners, knowing fully well that the teachers would boycott the proceedings thereby giving them cause to render judgment ex-parte.

The DISMISSAL therefore of the teachers is not justified, it being arbitrary and violative of the teacher's right to due process. Due process must be observed in dismissing the teachers because it affects not only their position but also their means of livelihood.

WHEREFORE, premises considered, the present petition is hereby GRANTED and all the questioned orders/decisions of the respondents are hereby declared NULL and VOID and are hereby SET ASIDE.

The reinstatement of all the petitioners to their former positions without loss of seniority and promotional rights is hereby ORDERED.

The payment, if any, of all the petitioners' back salaries, allowances, bonuses, and other benefits and emoluments which may have accrued to them during the entire period of their preventive suspension and/or dismissal from the service is hereby likewise ORDERED.

SO ORDERED.”[5]

From this adverse decision of the trial court, former DECS Secretary Isidro Cariño filed an appeal with the Court of Appeals raising the following grounds:

“I. The trial court seriously erred in declaring appellants as in default.

II. The trial court seriously erred in not ordering the proper substitution of parties.

III. The trial court seriously erred in holding that R.A. No. 4670, otherwise known as ‘Magna Carta for Public School Teachers’, should govern the conduct of the investigations conducted.

IV. The trial court seriously erred in ruling that the dismissal of the teachers are without due process.”[6]

As mentioned earlier, the Court of Appeals affirmed the RTC decision, holding in the main that private respondents were denied due process in the administrative proceedings instituted against them.

Hence, this petition for review.[7]

The Issues

Before us, petitioners raise the following issues:

### **“I**

Whether or not Respondent Court of Appeals committed grave abuse of discretion in holding in effect that private respondents were denied due process of law.

### **II**

Whether or not Respondent Court of Appeals seriously erred and committed grave abuse of discretion in applying strictly the provision of R.A. No. 4670 in the composition of the investigating committee.

### **III**

Whether or not Respondent Court of Appeals committed grave abuse of discretion in dismissing the appeal and in affirming the trial court's decision.”[8]

These issues, all closely related, boil down to a single question: whether private respondents were denied due

process of law.

### The Court's Ruling

The petition is bereft of merit. We agree with the Court of Appeals that private respondents were denied due process of law.

### Denial of Due Process

At the outset, we must stress that we are tasked only to determine whether or not due process of law was observed in the administrative proceedings against herein private respondents. We note the Solicitor General's extensive disquisition that government employees do not have the right to strike.[9] On this point, the Court, in the case of *Bangalisan vs. Court of Appeals*, [10] has recently pronounced, through Mr. Justice Florenz D. Regalado:

"It is the settled rule in this jurisdiction that employees in the public service may not engage in strikes. While the Constitution recognizes the right of government employees to organize, they are prohibited from staging strikes, demonstrations mass leaves, walk-outs and other forms of mass action which will result in temporary stoppage or disruption of public services. The right of government employees to organize is limited only to the formation of unions or associations, without including the right to strike."

More recently, in *Jacinto vs. Court of Appeals*, [11] the Court explained the schoolteachers' right to peaceful assembly vis-a-vis their right to mass protest:

"Moreover, the petitioners here, except Merlinda Jacinto, were not penalized for the exercise of their right to assemble peacefully and to petition the government for a redress of grievances. Rather, the Civil Service Commission found them guilty of conduct prejudicial to the best interest of the service for having absented themselves without proper authority, from their schools during regular school days, in order to participate in the mass protest, their absence ineluctably resulting in the non-holding of classes and in the deprivation of students of education, for which they were responsible. Had petitioners availed themselves of their free time -- recess, after classes, weekends or holidays -- to dramatize their grievances and to dialogue with the proper authorities within the bounds of law, no one -- not the DECS, the CSC or even this Court -- could have held them liable for the valid exercise of their constitutionally guaranteed rights. As it was, the temporary stoppage of classes resulting from their activity necessarily disrupted public services, the very evil sought to be forestalled by the prohibition against strikes by government workers. Their act by its nature was enjoined by the Civil Service law, rules and regulations, for which they must, therefore, be made answerable.[12]

In the present case, however, the issue is not whether the private respondents engaged in any prohibited activity which may warrant the imposition of disciplinary sanctions against them as a result of administrative proceedings. As already observed, the resolution of this case revolves around the question of due process of law, not on the right of government workers to strike. The issue is not whether private respondents may be punished for engaging in a prohibited action but whether, in the course of the investigation of the alleged proscribed activity, their right to due process has been violated. In short, before they can be investigated and meted out any penalty, due process must first be observed.

In administrative proceedings, due process has been recognized to include the following: (1) the right to actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (4) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected.[13]

The legislature enacted a special law, RA 4670 known as the Magna Carta for Public School Teachers, which specifically covers administrative proceedings involving public schoolteachers. Section 9 of said law expressly provides that the committee to hear public schoolteachers' administrative cases should be composed of the school superintendent of the division as chairman, a representative of the local or any existing provincial or national teachers' organization and a supervisor of the division. The pertinent provisions of RA 4670 read:

"Sec. 8. Safeguards in Disciplinary Procedure. – Every teacher shall enjoy equitable safeguards at each stage of any disciplinary procedure and shall have:

- a. the right to be informed, in writing, of the charges;
- b. the right to full access to the evidence in the case;
- c. the right to defend himself and to be defended by a representative of his choice and/or by his organization, adequate time being given to the teacher for the preparation of his defense; and
- c. the right to appeal to clearly designated authorities. No publicity shall be given to any disciplinary action being taken against a teacher during the pendency of his case.

Sec. 9. Administrative Charges. – Administrative charges against a teacher shall be heard initially by a committee composed of the corresponding School Superintendent of the Division or a duly authorized representative who would at least have the rank of a division supervisor, where the teacher belongs, as chairman, a representative of the local or, in its absence, any existing provincial or national teacher's organization and a supervisor of the Division, the last two to be designated by the Director of Public Schools. The committee shall submit its findings, and recommendations to the Director of Public Schools within thirty days from the termination of the hearings: Provided, however, That where the school superintendent is the complainant or an interested party, all the members of the committee shall be appointed by the Secretary of Education."

The foregoing provisions implement the Declaration of Policy of the statute; that is, to promote the "terms of employment and career prospects" of schoolteachers.

In the present case, the various committees formed by DECS to hear the administrative charges against private respondents did not include "a representative of the local or, in its absence, any existing provincial or national teacher's organization" as required by Section 9 of RA 4670. Accordingly, these committees were deemed to have no competent jurisdiction. Thus, all proceedings undertaken by them were necessarily void. They could not provide any basis for the suspension or dismissal of private respondents. The inclusion of a representative of a teachers' organization in these committees was indispensable to ensure an impartial tribunal. It was this requirement that would have given substance and meaning to the right to be heard. Indeed, in any proceeding, the essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard.[14]

Petitioners argue that the DECS complied with Section 9 of RA 4670, because "all the teachers who were members of the various committees are members of either the Quezon City Secondary Teachers Federation or the Quezon City Elementary Teachers Federation"[15] and are deemed to be the representatives of a teachers' organization as required by Section 9 of RA 4670.

We disagree. Mere membership of said teachers in their respective teachers' organizations does not ipso facto make them authorized representatives of such organizations as contemplated by Section 9 of RA 4670. Under this section, the teachers' organization possesses the right to indicate its choice of representative to be included by the DECS in the investigating committee. Such right to designate cannot be usurped by the secretary of education or

the director of public schools or their underlings. In the instant case, there is no dispute that none of the teachers appointed by the DECS as members of its investigating committee was ever designated or authorized by a teachers' organization as its representative in said committee.

Contrary to petitioners' asseverations,[16] RA 4670 is applicable to this case. It has not been expressly repealed by the general law PD 807, which was enacted later, nor has it been shown to be inconsistent with the latter. It is a fundamental rule of statutory construction that "repeals by implication are not favored. An implied repeal will not be allowed unless it is convincingly and unambiguously demonstrated that the two laws are so clearly repugnant and patently inconsistent that they cannot co-exist. This is based on the rationale that the will of the legislature cannot be overturned by the judicial function of construction and interpretation. Courts cannot take the place of Congress in repealing statutes. Their function is to try to harmonize, as much as possible, seeming conflicts in the laws and resolve doubts in favor of their validity and co-existence." [17] Thus, a subsequent general law does not repeal a prior special law, "unless the intent to repeal or alter is manifest, although the terms of the general law are broad enough to include the cases embraced in the special law." [18]

The aforementioned Section 9 of RA 4670, therefore, reflects the legislative intent to impose a standard and a separate set of procedural requirements in connection with administrative proceedings involving public schoolteachers. Clearly, private respondents' right to due process of law requires compliance with these requirements laid down by RA 4670. *Verba legis non est recedendum*.

Hence, Respondent Court of Appeals, through Mr. Justice Vicente V. Mendoza who is now a member of this Court, perceptively and correctly stated:

"Respondent-appellants argue that the Magna Carta has been superseded by the Civil Service Decree (P.D. No. 807) and that pursuant to the latter law the head of a department, like the DECS secretary, or a regional director, like the respondent-appellant Nilo Rosas, can file administrative charges against a subordinate, investigate him and take disciplinary action against him if warranted by his findings. Respondent-appellants cite in support of their argument the following provisions of the Civil Service Decree (P.D. No. 807):

**Sec. 37. Disciplinary Jurisdiction. --**

xxx xxx xxx

b) The heads of departments, agencies and instrumentalities xxx shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction xxx .

**Sec. 38,. Procedure in Administrative Cases Against Non-Presidential Appointees. -**

a) Administrative Proceedings may be commenced against a subordinate officer or the employee by the head of department or officer of equivalent rank, or head of local government, or chiefs of agencies, or regional directors, or upon sworn, written complaint of any other persons.

There is really no repugnance between the Civil Service Decree and the Magna Carta for Public School Teachers. Although the Civil Service Decree gives the head of department or the regional director jurisdiction to investigate and decide disciplinary matters, the fact is that such power is exercised through committees. In cases involving public school teachers, the Magna Carta provides that the committee be constituted as follows:

**Sec. 9. Administrative Charges. -** Administrative charges against a teacher shall be heard initially by a committee composed of the corresponding School Superintendent of the Division or a duly authorized representative who would at least have the rank of a division supervisor, where the teacher belongs, as chairman, a representative of the local or, in its absence, any existing provincial or national teacher's organization and a supervisor of the Division, the last two to be designated by the Director of Public Schools. The committee shall submit its findings,

and recommendations to the Director of Public Schools within thirty days from the termination of the hearings: Provided, however, that where the school superintendent is the complainant or an interested party, all the members of the committee shall be appointed by the Secretary of Education.

Indeed, in the case at bar, neither the DECS [s]ecretary nor the DECS-NCR regional director personally conducted the investigation but entrusted it to a committee composed of a division supervisor, secondary and elementary school teachers, and consultants. But there was no representative of a teachers organization. This is a serious flaw in the composition of the committee because the provision for the representation of a teachers organization is intended by law for the protection of the rights of teachers facing administrative charges.

There is thus nothing in the Magna Carta that is in any way inconsistent with the Civil Service Decree insofar as procedures for investigation is concerned. To the contrary, the Civil Service Decree, [S]ec. 38(b) affirms the Magna Carta by providing that the respondent in an administrative case may ask for a “formal investigation,” which was what the teachers did in this case by questioning the absence of a representative of a teachers organization in the investigating committee.

The administrative committee considered the teachers to have waived their right to a hearing after the latter’s counsel walked out of the preliminary hearing. The committee should not have made such a ruling because the walk out was staged in protest against the procedures of the committee and its refusal to give the teachers’ counsel a copy of the guidelines. The committee concluded its investigation and ordered the dismissal of the teachers without giving the teachers the right to full access of the evidence against them and the opportunity to defend themselves. Its predisposition to find petitioner-appellees guilty of the charges was in fact noted by the Supreme Court when in its resolution in G.R. No. 101943 (*Rosario Septimo v. Judge Martin Villarama, Jr.*) it stated:

The facts and issues in this case are similar to the facts and issues in *Hon. Isidro Cariño, et al. v. Hon. Carlos C. Ofilada, et al.* G.R. No. 100206, August 22, 1961.

As in the *Cariño v. Ofilada* case, the officials of the Department of Culture and Education are predisposed to summarily hold the petitioners guilty of the charges against them. In fact, in this case Secretary Cariño, without awaiting formal administrative procedures and on the basis of reports and “implied admissions” found the petitioners guilty as charged and dismissed them from the service in separate decisions dated May 16, 1991 and August 6, 1991. The teachers went to court. The Court dismissed the case.”[19]

Furthermore, this Court sees no valid reason to disregard the factual findings and conclusions of the Court of Appeals. It is not our function “to assess and evaluate all over again the evidence, testimonial and documentary, adduced by the parties particularly where, such as here, the findings of both the trial court and the appellate court coincide.”[20]

It is as clear as day to us that the Court of Appeals committed no reversible error in affirming the trial court’s decision setting aside the questioned orders of petitioners; and ordering the unqualified reinstatement of private respondents and the payment to them of salaries, allowances, bonuses and other benefits that accrued to their benefit during the entire duration of their suspension or dismissal.[21] Because the administrative proceedings involved in this case are void, no delinquency or misconduct may be imputed to private respondents. Moreover, the suspension or dismissal meted on them is baseless. Private respondents should, as a consequence, be reinstated[22] and awarded all monetary benefits that may have accrued to them during the period of their unjustified suspension or dismissal.[23] This Court will never countenance a denial of the fundamental right to due process, which is a cornerstone of our legal system.

WHEREFORE, premises considered, the petition is hereby DENIED for its utter failure to show any reversible error on the part of the Court of Appeals. The assailed Decision is thus AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), Romero, Melo, and Francisco, JJ., concur.

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[1] Rollo, pp. 44-57.

[2] Third Division, composed of J. Vicente V. Mendoza (now an associate justice of the Supreme Court ), ponente and Chairman; and JJ. Jorge S. Imperial and Quirino D. Abad Santos, Jr., concurring.

[3] Penned by Judge Martin S. Villarama, Jr.

[4] Decision of the Court of Appeals, p. 14; rollo, p. 57.

[5] Ibid. pp. 1-7; rollo, pp. 44-50.

[6] Ibid. p. 8; rollo, p. 51.

[7] The case was deemed submitted for resolution upon receipt by the Court of Petitioner's Memorandum on July 16, 1996.

[8] Memorandum for Petitioners, pp. 16-17, rollo, pp. 271-272.

[9] Ibid., pp. 17-30, rollo, pp. 272-285.

[10] G.R. No. 124678, July 31, 1997.

[11] Merlinda Jacinto et al. vs. Court of Appeals, G.R. No. 124540, November 14, 1997, per Panganiban, J.

[12] Ibid., pp. 16-17.

[13] Air Manila, Inc. vs. Balatbat, 38 SCRA 489, 492, April 29, 1971, per Reyes, J. B. L., J.

[14] See Bernas, Joaquin G., The 1987 Constitution of the Republic of the Philippines: A Commentary, p. 108, (1996).

[15] Petition, p. 30; rollo, p. 37.

[16] Memorandum for Petitioners, pp. 35-38; rollo, pp. 290-293.

[17] Ty vs. Trampe, 250 SCRA 500, 512, December 1, 1995, per Panganiban, J.

[18] Laguna Lake Development Authority vs. Court of Appeals, 251 SCRA 42 , 56, December 7, 1995, per Hermosisima, Jr., J.

[19] Decision of the Court of Appeals, pp. 10-13; rollo, pp. 53-56.

[20] South Sea Surety and Insurance Co., Inc. vs. Court of Appeals, 244 SCRA 744, 749, June 2, 1995, per Vitug, J.

[21] See Decision of the Regional Trial Court, p. 6; rollo, p. 84.

[22] See Paragraph 4, Section 26, E.O. No. 292.

[23] See also Miranda vs. Commission on Audit, 200 SCRA 657, 662, August 16, 1991, per Paras, J.

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