

DRA. HONORATA G. BAYLON, PETITIONER, VS. FACT-FINDING INTELLIGENCE BUREAU REPRESENTED BY DIRECTOR AGAPITO ROSALES AND THE OFFICE OF THE OMBUDSMAN, RESPONDENTS.

G.R. No. 150870. December 11, 2002

Ponente: CARPIO-MORALES, J.

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CARPIO-MORALES, J.:

By the present petition for review on certiorari, petitioner prays this Court to give due course to her appeal and to ultimately set aside the Office of the Ombudsman's order for her suspension from public office.

The following facts are not disputed:

Sometime in 1993, Dr. Honorata G. Baylon (petitioner), Head of the Division of Hematology and Transfusion Medicine at the National Kidney and Transplant Institute (NKTi), was designated as Program Manager of the government's National Voluntary Blood Donation Program (Blood Donation Program) with NKTi as the lead agency in the implementation thereof.

The Blood Donation Program later became a component of the project "STOP D.E.A.T.H (Disasters, Epidemics, and Trauma for Health): Hospitals for Philippines 2000" which was launched on February 18, 1994 by the Department of Health (DOH) headed by the then Secretary Juan M. Flavio (Flavio).[1] Petitioner remained at the helm of the Blood Donation Program.[2]

On February 24, 1994, Flavio publicly disclosed the results of the United States Agency for International Development (USAID)-sponsored study on the safety of the country's blood banking system which found out that the Philippines' blood transfusion service failed to adequately meet the demand for safe blood and that the blood sourced from commercial blood banks had a contamination rate of four percent.[3] Flavio thus ordered the closure of provincial retail outlets of commercial blood banks as a result of which an acute shortage of transfused blood ensued because of the blood banks' refusal to sell blood in retaliation to the said closure order.

Flavio accordingly directed the full operation of the Blood Donation Program, which apparently served as the then only viable system from which blood could be sourced.

On March 8 and 17, 1994, the NKTi, through petitioner, issued Requisition and Issue Vouchers[4] for the purpose of purchasing blood bags for immediate distribution to DOH hospitals or medical centers where the system of voluntary blood donation would then be put in place. As "Terumo" blood bags were believed to be the finest in the market, the NKTi obtained a quotation therefor dated March 16, 1994[5] from their exclusive distributor, the FVA EX-IM Trading, Inc. (FVA), as follows:

1.

[Blood Bag], Single Capacity

=

P 72.29 [per piece]

2.

Double Capacity

=

P171.00

3.

Triple Capacity

=

P263.70

Another quotation dated March 29, 1994[6] was later furnished by FVA reflecting the following reduced prices:

1. Single

=

P 63.54

2. Double

=

P150.00

3. Triple

=

P209.09

Petitioner signified her conformity to the second quotation. The NKTi subsequently purchased “Terumo” blood bags from FVA under the following purchase orders with their corresponding dates, the respective amounts involved in each sale transaction, and the names of the approving authority:[7]

Date

Purchase Order No.

Amount

Approving Authority

1. April 11, 1994

94-00943

P1,270,800.00 Juan M. Flavier,

Jaime Galvez-Tan

Juan R. Nanagas

2. May 25, 1994

94-00132

P536,025.00 Filoteo A. Alano

(recommended by

Aileen R. Javier)

3. August 12, 1994

94-00147

P1,702,687.65 Juan M. Flavier

4. November 14, 1994

94-00172

P2,209,915.00 Juan M. Flavier

5. December 6, 1994

94-00182

P 506,585.45 Juan M. Flavier

In March 1995, the Commission on Audit (COA) disallowed in post audit the sale transactions entered into by the NKTi with FVA on the ground that the blood bags were purchased without public bidding, contrary to the applicable laws or rules, thereby allegedly resulting to overpricing.[8] The COA found that FVA sold “Terumo” blood bags to the Philippine National Red Cross (PNRC) and to blood banks Our Lady of Fatima and Mother Seaton at prices lower than those at which it sold to the NKTi, leading to a consequent total loss to the government in the amount of P1,964,304.70.

The Auditor of the NKTi accordingly ordered the suspension of purchases of blood bags from FVA and eventually disallowed the payment of blood bags amounting to P6,006,133.54.

A criminal complaint, docketed as OMB-0-97-0242, for violation of Section 3(e) and (g) of Republic Act (R. A.) No. 3019 (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT), was thus filed by the Office of the Ombudsman against petitioner, Flavier, then DOH Undersecretaries Dr. Jaime Galvez-Tan and Dr. Juan R. Nañagas, NKTi Executive Director Dr. Filoteo A. Alano, NKTi Deputy Executive Director Dr. Aileen R. Javier, NKTi Property Division Chief Diana Jean F. Prado and NKTi Accounting Division Chief Maribel U. Estrella. At the same time, an administrative complaint for gross misconduct was lodged against petitioner and the same respondents except Flavier and Galvez-Tan.

The administrative complaint was docketed as OMB-ADM-0-97-0165, now the subject of the present petition.

Petitioner disclaimed administrative liability. Adopting[9] her May 20, 1997 counter-affidavit[10] filed in the criminal complaint, petitioner claimed that the acquisition of the blood bags via negotiated purchase came under the exceptions to public bidding as provided for by law, citing the following pertinent provision of Executive Order No. 301 (DECENTRALIZING ACTIONS ON GOVERNMENT NEGOTIATED CONTRACTS, LEASE CONTRACTS AND RECORDS DISPOSAL):

SECTION 1. Guidelines for Negotiated Contracts. – Any provision of law, decree, executive order or other issuances to the contrary notwithstanding, no contract for public services or for furnishing supplies, materials and equipment to the government or any of its branches, agencies or instrumentalities shall be renewed or entered into without public bidding, except under any of the following situations:

x x x x x x x x

b. Whenever the supplies are to be used in connection with a project or activity which cannot be delayed without causing detriment to the public service;

c. Whenever the materials are sold by an exclusive distributor or manufacturer who does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained elsewhere at more advantageous terms to the government;

x x x x x x x x

e. In cases where it is apparent that the requisition of the needed supplies through negotiated purchase is most advantageous to the government to be determined by the Department Head concerned;

x x x x x x x x (*Italics supplied*).

Thus she explained: firstly, the blood bags were used in the Blood Donation Program which had to be implemented immediately to address the scarcity of blood at the time; secondly, FVA was the only exclusive distributor without subdealers of “Terumo” blood bags; and thirdly, negotiated purchase of the blood bags was most advantageous to the government for the prices at which the NKTi obtained them from FVA were the lowest compared to those at which they were acquired by other government hospitals, as the following shows:[11]

HOSPITALS

BLOOD BAGS

Single Double Triple

NKTI P63.54 P150.00 P209.00

Philippine General Hospital P78.00 P185.40 P285.00

Jose Reyes Memorial Medical Center P85.05

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Dr. Jose Fabella Memorial Hospital P85.00 P199.00

--

Philippine Children's Medical Center P64.00

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P209.09

Philippine Heart Center P78.00 P190.00

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Petitioner submitted certifications[12] from various medical establishments attesting to the superior quality and features of “Terumo” blood bags which have made them the most widely used among hospitals and blood banks; the counter-affidavit filed in the same criminal complaint of FVA President Francisco V. Abalos,[13] who was subsequently dropped as respondent therein upon his death on January 31, 1998; and Flavier’s December 3, 1999 sworn statement submitted also in the criminal complaint.

In his counter-affidavit, Abalos explained that the lower prices at which the FVA sold blood bags to PNRC, Mother Seaton and Our Lady of Fatima, were meant to aid these blood banks to reduce their operational costs so that they would sell at low prices to their buyers who were mostly the poor, as well as to reduce FVA’s excess inventory then.

In his December 3, 1999 sworn statement, Flavier declared that the negotiated purchase of the blood bags was justified by the conditions obtaining at the time; the NKTI’s transactions with FVA were not tainted with any irregularities; petitioner and the other NKTI officials were responsible for successfully implementing a 100% voluntary blood donation system in ten regional hospitals and medical centers; and that were it not for petitioner’s work as Program Manager of the Blood Donation Program, disastrous consequences would have befallen patients, the DOH, and the Blood Donation Program itself.

By Memorandum Review of June 13, 2000,[14] Assistant Ombudsman Abelardo L. Aportadera (Aportadera) recommended the exoneration of the respondents Nañagas and Estrella. Taking note, of the Ombudsman’s finding of probable cause to criminally hale petitioner and company into court, Aportadera recommended, by the same Review Memorandum, that herein petitioner and the rest of her co-respondents be held guilty of Grave Misconduct for which they should be meted a penalty of SIX (6) MONTHS SUSPENSION.

Aportadera's recommendation was approved by the Ombudsman on June 16, 2000. A motion for reconsideration of this June 16, 2000 – approved Memorandum Review having been denied by the Memorandum Review of July 19, 2000 which the Ombudsman approved on July 28, 2000,[15] petitioner filed on October 4, 2000 a petition with this Court for certiorari and prohibition with prayer for a temporary restraining order (TRO) and/or writ of preliminary injunction, docketed as G. R. No. 145000, seeking the nullification of the Ombudsman's above-said Memorandum Reviews.

By Resolution of October 16, 2000, this Court dismissed the petition for having been brought to the wrong forum in light of the ruling in *Fabian v. Desierto*[16] that appeals from the decision of the Ombudsman should be made to the Court of Appeals by a petition for review under Rule 43 of the 1997 Rules of Civil Procedure. Unlike the *Fabian*, this Court did not order the transfer of the petition to the Court of Appeals for proper disposition pursuant to this Court's Resolution in A. M. No. 99-2-02-SC dated February 9, 1999 declaring that any appeal filed with this Court after March 15, 1999 from a decision, resolution or order of the Ombudsman in an administrative case would no longer be referred to the Court of Appeals. Petitioner's Motion for Reconsideration of this Court's October 16, 2000 Resolution was denied on January 22, 2001.

Petitioner thus elevated the Ombudsman's Memorandum Reviews to the Court of Appeals by a petition for review filed on April 18, 2001, docketed as CA-G. R. SP No. 64332. By Resolution of May 2, 2001,[17] however, the Court of Appeals dismissed the petition for having been filed beyond the fifteen-day reglementary period, reckoned from petitioner's receipt of the Ombudsman's second Memorandum Review on August 7, 2000.

Petitioner filed a Motion for Reconsideration of the May 2, 2001 Resolution of the Court of Appeals. Pending resolution thereof or on July 6, 2001, petitioner filed a motion for leave to submit a copy of the COA Decision No. 2001-11 dated June 21, 2001[18] which lifted the audit disallowance of the payments made for the purchases by the NKTi of the "Terumo" blood bags from FVA. In said decision, the COA held that the purchase of blood bags without public bidding was not violative of the law, was not disadvantageous to the government, and did not accord undue preference to FVA. In a Resolution of November 21, 2001,[19] the Court of Appeals denied petitioner's Motion for Reconsideration.

Hence, the present petition for review on certiorari with an application for a TRO and/or an injunctive writ which was filed on December 21, 2001. Public respondents filed their Comment,[20] to which petitioner filed her Reply.[21]

Petitioner imputes to the Court of Appeals the commission of grave error in dismissing her petition for review on a mere technicality. She invokes considerations of substantial justice for this Court to give her petition due course and essentially prays that the Resolutions of the Court of Appeals be set aside and that the Memorandum Reviews of the Ombudsman be nullified.

During the pendency of the present petition or on March 14, 2002, petitioner filed a motion[22] to grant her leave to file a Manifestation informing that this Court rendered on December 14, 2001 a decision[23] in G. R. No. 142738, "*Dr. Honorata Baylon v. Office of the Ombudsman and Sandiganbayan*," reversing and setting aside the Ombudsman's February 28, 2000 Resolution finding probable cause to criminally prosecute her before the Sandiganbayan arising from the same acts subject of the Ombudsman's Memorandum Reviews finding her administratively liable, and that the said decision "be considered persuasive to the instant proceeding." At the same time, petitioner filed the Manifestation.[24]

By Resolution of April 10, 2002, this Court Resolved to

- (a) GRANT the motion of petitioner to admit the copy of the court's decision in G. R. No. 142738 through a manifestation as said decision of December 14, 2001 should be considered persuasive to the instant

proceeding; and

(b) NOTE the said manifestation.

Petitioner submits that the dismissal by the Court of Appeals of her petition for review by mere technicality would cause a miscarriage of justice for, so she contends, she has raised meritorious arguments, adduced evidence, and presented special circumstances proving her innocence of the charge of grave misconduct.

This Court finds that the Court of Appeals correctly dismissed petitioner's petition for review for having been filed beyond the reglementary period.

The correctness of the Court of Appeals' dismissal of petitioner's petition for review notwithstanding, this Court cannot write *finis* to the case at bar by the strict application of the rules of procedure governing appeals. For judicial cases do not come and go through the portals of a court of law by the mere mandate of technicalities.

After going over all the pleadings, evidence, and all other documents bearing on this case, this Court has resolved to spare the present petition from dismissal to which it should have been consigned as a matter of procedure.

The allowance of the filing of appeals or actions even when everything is lost due to non-compliance with rules or technicalities is not a novel phenomenon for this Court. In the case of *Cortes v. Court of Appeals*,^[25] counsel for a party in a case before the trial court failed to withdraw his appearance as such when he was appointed as judge of the Dumaguete Regional Trial Court in January 1983. Thus, after the lower court rendered a decision on February 16, 1983, the same was served on February 28, 1983 upon said counsel, who was then in his judicial station, at his Cebu City address. Having learned of the decision only on March 8, 1983, he immediately informed his client who learned of the adverse judgment a few days later after being out on official business. On March 22, 1983, the concerned party's new counsel accordingly filed a notice of appeal which the lower court denied due course for having been filed beyond the 15-day reglementary period. This Court ruled that the seven-day delay did not warrant the outright dismissal of the appeal, taking into account the peculiar circumstances of the case and the appeal's ostensible merit.

Likewise, in *Legasto v. Court of Appeals*,^[26] a decision in an action for ejectment was rendered against therein private respondents by the Metropolitan Trial Court and the Regional Trial Court. Appeal via a petition for review was subsequently filed with the Court of Appeals which initially dismissed the petition for having been filed two days beyond the reglementary period. On motion for reconsideration, however, the Court of Appeals gave due course to the appeal after accepting counsel's explanation that the making of the petition was delayed by brownouts. Declaring that a delay in the filing of an appeal under exceptional circumstances may be excused on grounds of substantial justice and equity, this Court affirmed the Court of Appeals decision to give due course to the belated appeal as it raised an important legal question bearing upon many similarly situated tenants and landlords in the country.

The same failure to file an appeal on time was excused in *Philippine National Bank v. Court of Appeals*^[27] where this Court allowed an appeal filed three days late in the higher interest of justice, as barring the said appeal would be inequitable and unjust in light of certain circumstances therein.

The foregoing jurisprudence and similar other cases indeed constitute a testament to what *C. Viuda de Ordoveza v. Raymundo*^[28] described as ". . . the power of the court to suspend its own rules, or to except a particular case from its operation, whenever the purposes of justice require it." *Ginete v. Court of Appeals*^[29] specifically laid down the range of reasons which may provide justifications for a court to resist a strict adherence to procedure, enumerating, thus, the following elements for an appeal to be given due course by a suspension of the enforcement of procedural rules: (1) matters of life, liberty, honor or property; (2) counsel's negligence without

any participatory negligence on the part of the client; (3) the existence of special or compelling circumstances; (4) the merits of the case; (5) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (6) a lack of any showing that the review sought is merely frivolous and dilatory; and (7) the other party will not be unjustly prejudiced thereby.

We find attendant in the case at bar transcendental considerations which outweigh rules of procedure thereby providing justification for the suspension of their application. Petitioner's evidence and arguments in support of her claim of innocence of the charge of grave misconduct have indeed cast doubt on the veracity of the Ombudsman's factual conclusions in the subject administrative case against her. We cannot thus simply brush aside petitioner's protestations of lack of administrative culpability for the sake of sticking to technicalities when the merits of her cause are crying out for proper judicial determination.

The tardiness of the appeal of petitioner before the Court of Appeals undoubtedly stemmed from her counsel's faux pas in the remedy pursued to assail the Ombudsman's questioned Memorandum Reviews. In the normal course of things, petitioner would have been covered by the general rule that a client is bound by the negligence or mistakes of his counsel. Yet, the patent merits of petitioner's cause for the nullification of her suspension from public office nag the Court towards the realization that to deny her the instant petition now based merely on the fiction that the counsel's negligence binds the client is to unjustly seal petitioner's fate without the benefit of a review of the correctness and justness of her imposed administrative liability. Hers, thus, is a case of an extremely different kind; the exception to the rule on the effects of the counsel's mistake or negligence, for the application of the rule would result in serious injustice^[30] to petitioner. Especially in this case where she had nothing to do with her counsel's mistake and negligence, thus clearly falling within the ambit of the reasons provided for by Ginete for the relaxation of the rules.

This Court takes note of special circumstances relative to the case at bar. The Decision of this Court in G. R. No. 142738 categorically declared the lack of probable cause to indict petitioner for the same acts constitutive of the administrative charge against her, hence, it ordered the Sandiganbayan to dismiss the criminal case against petitioner and her co-accused. In the same vein, the COA Decision No. 2001-11 found no irregularity in the purchases by the NKTi of the blood bags from FVA and thus it lifted its previous disallowance of the payments to said purchases. Such determinations in favor of petitioner by other fora, independent they may be from the administrative action against her, serve as added reasons to warrant the taking of a hard look at the Ombudsman's Memorandum Reviews.

Suspension from public office is a serious incident that definitely blemishes a person's record in government service. It is an injury to one's reputation and honor which produces irreversible effects on one's career and private life. If only to assure the judicial mind that no injustice is allowed to take place due to a blind adherence to rules of procedure, the dismissal on technicality of petitioner's action, which is aimed at establishing not just her innocence but the truth, cannot stand. That the Ombudsman's Memorandum Reviews may have attained finality due to petitioner's belated appeal therefrom to the Court of Appeals does not preclude a modification or an alteration thereof, for if the execution of a decision becomes impossible or unjust, it may be modified or altered to harmonize it with justice and the facts.^[31]

On the suspension of the enforcement of procedural rules to give way to matters of greater value, this Court could not have more eloquently defined its stance, thus:

In the interest of substantial justice, procedural rules of the most mandatory character in terms of compliance, may be relaxed. In other words, if strict adherence to the letter of the law would result in absurdity and manifest injustice or where the merit of a party's cause is apparent and outweighs consideration of non-compliance with certain formal requirements, procedural rules should definitely be liberally construed. A

party-litigant is to be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on mere technicalities.[32] x x x

Prescinding from the foregoing, the Court resolved to give due course to the present petition and set aside the challenged Resolutions of May 2, 2001 and November 21, 2001 of the Court of Appeals. We will not, however, remand the case to the appellate court, a remand not being necessary where, as in this case, We are in a position to resolve the dispute based on the records before it and the ends of justice would not be subserved thereby.[33]

While factual findings of administrative and quasi-judicial agencies are generally accorded not only respect but at times finality,[34] this holds true only when they are supported by substantial evidence.

The Ombudsman's finding in its questioned Memorandum Reviews that petitioner is guilty of grave misconduct was anchored principally on the fact that FVA sold the same "Terumo" blood bags to PNRC and the Mother Seaton and Our Lady of Fatima blood banks at lower prices. Such fact, however, cannot be regarded substantial evidence proving that petitioner is guilty of grave misconduct.

Petitioner's countervailing evidence shows that the acquisitions of blood bags for government use were negotiated purchases which were justified by proven reasons for their lawful execution under Executive Order No. 301[35] even without the required public bidding. It is an undisputed fact that the blood bags were utilized for the Blood Donation Program the immediate implementation of which program was then necessitated by circumstances of public notice so that the urgency for the blood bags' acquisition warranted negotiated purchase instead of by public bidding. It is undisputed that FVA was then the sole exclusive distributor of "Terumo" blood bags, thus providing another reason for the purchases to be exempted from public bidding.

Petitioner's evidence too shows that the negotiated purchase was not disadvantageous to the government, considering, among other factors, the quality of the blood bags and the price at which they were purchased as compared to those purchased by other government hospitals, and the time element.

The Ombudsman's conclusion that petitioner and her co-respondents did not negotiate with FVA to obtain the best possible terms and conditions of purchase finds no support in the evidence on record. On the contrary, as reflected above, the NKTI through petitioner sought two quotations from FVA for the blood bags with the second quotation offering lower prices.

In grave misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule must be manifest.[36] Petitioner's actuations in the procurement of the blood bags were clearly antithetical to what constitutes grave misconduct.

What appears from the questioned Memorandum Reviews of the Ombudsman is that they merely relied on the singular circumstance that certain medical institutions were allowed to purchase the blood bags at lower prices, without taking into account petitioner's countervailing evidence.

While substantial evidence, which is more than a mere scintilla but is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion,[37] suffices to hold one administratively liable, the substantial evidence rule does not authorize any finding to be made just as long as there is any evidence to support it; it does not excuse administrative agencies from taking into account countervailing evidence which fairly detracts from the evidence supporting a finding.[38] The evidence in support of the Ombudsman's findings does not amount to substantial evidence.

WHEREFORE, the petition at bar is hereby GRANTED. The assailed May 2, 2001 and November 21, 2001 Resolutions of the Court of Appeals, as well as the June 16, 2000 and July 28, 2000-approved Memorandum Reviews of the Ombudsman, are hereby SET ASIDE. The respondent is hereby ABSOLVED from any

administrative liability in connection with the purchases in question.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Callejo, Sr., and Azcuna, JJ., concur.

Puno, Vitug, Mendoza, Panganiban, and Quisumbing, JJ., in the result.

Corona, J., on official leave.

[1] Rollo, p. 65.

[2] Rollo, p. 67.

[3] Affidavit of Flavier, Rollo, pp. 78–84.

[4] Annexes “I” and “J”, Rollo, pp. 85–86.

[5] Annexes “K”, Rollo, pp. 87–88.

[6] Annex “L”, Rollo, pp. 89–91.

[7] Resolution dated March 17, 1999 of the Ombudsman’s Evaluation and Preliminary Investigation Bureau (EPIB), Rollo, pp. 306–307.

[8] Decision of the Supreme Court in G. R. No. 142738, Rollo, p. 351.

[9] Rollo, pp. 108–109.

[10] Rollo, pp. 110–117.

[11] Based on Purchase Vouchers and Invoices already forming part of the Ombudsman’s records.

[12] Annexes “M”, “M-1”, “M-2”, “M-3”, “M-4”, “M-5”, Rollo, pp. 92–97.

[13] Rollo, pp. 98–102.

[14] Rollo, pp. 118–120.

[15] Rollo, pp. 138–143.

[16] 295 SCRA 470 [1998].

[17] Rollo, pp. 58–60.

[18] Rollo, pp. 273–278.

[19] Rollo, p. 62.

[20] Rollo, pp. 330–334.

[21] Rollo, pp. 372–391.

[22] Rollo, pp. 336–338.

[23] Rollo, pp. 347–369.

[24] Rollo, pp. 339–345.

[25] 161 SCRA 444 (1998).

[26] 172 SCRA 722 (1989).

[27] 246 SCRA 304 (1995).

[28] 63 Phil. 275 (1936).

[29] 296 SCRA 38 (1998).

[30] Villa Rhecar Bus v. De La Cruz, 157 SCRA 13 (1998).

[31] Ronquillo v. Marasigan, 5 SCRA 304 (1962).

[32] Yao v. Court of Appeals, 344 SCRA 202 (2000).

[33] Heirs of Crisanta Y. Gabriel-Almoradie v. Court of Appeals, 229 SCRA 15 (1994).

[34] Marcopper Mining Corporation v. Bumolo, 348 SCRA 656 (2000); Laysa v. Commission on Audit, 343 SCRA 520 (2000).

[35] Section 1, (b), (c), (e).

[36] Civil Service Commission v. Lucas, 301 SCRA 560 (1999), citing Landrito v. Civil Service Commission, 223 SCRA 564 (1993).

[37] Ang Tibay v. CIR, 69 Phil. 635 (1940).

[38] Samahan ng mga Manggagawa sa Bandolino-LMLC v. National Labor Relations Commission, 275 SCRA 633 (1997).

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