

**JOSE O. TEODORO AND ESPARANZA ZACARIAS, PETITIONERS, VS.
HON. GUILLERMO CARAGUE, AS INCUMBENT SECRETARY OF
BUDGET AND MANAGEMENT AND MESSRS. ALBERTO ROMULO AND
MANUEL ALBA, RESP...**

G.R. No. 96004. February 21, 1992

Ponente: PARAS, J.

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PARAS, J.:

Petitioner Jose O. Teodoro retired effective March 14, 1977 from the Philippine Foreign Service with the rank of Ambassador under Rep. Act 1616. At the time of his retirement, his highest basic salary received was P29,866.00 per annum or P2,488.83 per month. Per leave credits computation by the Office of the Personnel and Management Services of the then Ministry (now Department of Foreign Affairs), he earned in the course of his about 31 years of service in the government a total of 285.96 working days of unenjoyed leaves--275.082 days of which were earned abroad and the remaining 10.834 days in the Home Office.

Upon the other hand, petitioner Esperanza Zacarias retired from the Foreign Service with the rank of Career Minister, effective June 20, 1980. Her highest basic salary on the date of her retirement was P3,112.00 per month. Per computation by the Office of the Personnel and Management of the then Ministry of Foreign Affairs she earned unenjoyed vacation leave credits of 319.667 days and sick leave credits of 660.661 days, or a total of 980.328 days. However, under the Foreign Service Act (RA No. 708, as amended) and its implementing regulations, she was entitled only to a maximum of 120 days vacation leave and 240 days sick leave, or a total of 360 days leave, thereby forfeiting the excess of 620 days. In the computation of the compensable unused leave credits of petitioner Zacarias by the then Ministry of Foreign Affairs, it was admitted and accepted that all her leave credits of 360 working days were earned abroad.

Since petitioner Teodoro retired in 1977, payment of his unspent accumulated leave credits of 275.082 days earned abroad was computed in accordance with applicable rules and regulations existing prior to the effectivity on January 1, 1978 of Presidential Decree No. 1285, which retirement unspent accumulated leave credits were payable in US dollars at the exchange rate of P2.00 to US\$1.00.

So with that of the unenjoyed accumulated leave credits of petitioner Zacarias, who, albeit retired effective June 20, 1980, had earned the first 120 days of her unspent vacation leave credits and first 240 days of her unused sick leave credits prior to January 1, 1978.

Thus, per computation by the Office of the Personnel and Management Services of the then Ministry of Foreign Affairs, petitioner Teodoro was entitled to US\$15,000.00 for his 275.082 working days of unused leave credits earned abroad.

Anent petitioner Zacarias' petition, her 360 working days of unused earned leave credits, computed at the exchange rate of P2.00 to US \$1.00, entitled her to a total leave pay of US\$27,326.02. But since she had already

received from the Philippine Consulate General in San Francisco, California the sum of US\$16,327.22, the same as deducted therefrom. Upon the other hand, the sum of US\$2,899.10, which was deducted from said previous payment as trust deposit, ought to be refunded and added to her total unpaid leave pay, netting her the sum of US\$13,846.90.

The then Ministry of Foreign Affairs, referred both claims for appropriate action to the Commission on Audit, which concurred with the Ministry's computations and passed in audit petitioners' claims. This was relayed in a 1st Indorsement dated July 30, 1984 to the Commission's resident Auditor at the Ministry of Foreign Affairs.

Informed of the action taken by the Commission on Audit, then Foreign Minister Arturo Tolentino wrote the respondent Budget Minister informing the latter that the Ministry "will pay the terminal leave benefits of Mr. Teodoro and Miss Zacarias in U.S. dollars at the exchange rate of P2.00 to \$1.00". Accordingly, the Ministry of Foreign Affairs requested the release of P429, 558.00 to cover the payments of petitioners' terminal leave benefits, as converted to Philippine pesos in accordance with the exchange rate at the time of payments thereof.

But the respondent Budget Minister denied the request and, instead, released the amount of only P123,416.66 on the ground that under Foreign Ministry--Budget Ministry Order No. 30-83 dated December 1, 1983, payments of petitioners' claims for terminal leave pay shall in Philippine pesos to be converted at the rate of exchange prevailing at the time of retirement.

Aggrieved, herein petitioners filed before this Court a Petition for Writ of Mandamus and Damages to compel then respondent Budget Minister Manuel Alba to release to the Ministry of Foreign Affairs the sum of P306,141 for payment of the balance due the petitioners on their respective claims for terminal leave pay, docketed as G.R. No. 70242.

However, this Court, in its Resolution promulgated on March 26, 1987, dismissed the aforesaid petition. Petitioners filed a Motion for Reconsideration and a second Motion for Reconsideration of the aforementioned Resolution, but both motions were denied in the Resolutions of September 10, 1987 and November 12, 1987, respectively.

About three (3) years after receipt on December 2, 1987 of the aforesaid Resolution denying their Second Motion for Reconsideration, petitioners filed on November 20, 1990 with this Court the instant Petition for Review.

The instant petition seeks to annul the Court's Resolutions dated March 26, 1987, September 10, 1987 and November 12, 1987, all issued in G.R. No. 70242 (Jose O. Teodoro and Esperanza Zacarias vs. Guillermo Carague as Budget Minister), on the following grounds:

- a) Respondent Budget Minister exceeded his jurisdiction and/or committed grave abuse of discretion in denying the Minister of Foreign Affairs' request for the release of the amount covering petitioners' claims for terminal leave credits which was passed in audit by the Commission on Audit; and
- b) The disapproval of the computations of petitioners' claims for terminal leave credits in US dollars at the exchange rate of P2.00 to US \$1.00, is discriminatory since other officers and employees of the Ministry of Foreign Affairs similarly situated as petitioners were paid their terminal leave credits in accordance therewith.

The issues to resolve in this case are:

- a) Whether or not the grounds in support of the petition are meritorious; and
- b) If so, whether or not petitioners are entitled to the reliefs demanded.

We note that petitioners admit the decision in their case has already long become final. For all intents and

purposes, the instant case should ordinarily be already barred since the old case, G.R. 70242 and the present case, G.R. 96004, have identity of parties, subject matter, and cause of action. For as we have already held, once a litigant's rights have been adjudicated in a valid final judgment of a competent court, he should not be granted an unbridled license to come back for another try (*Santos vs. Intermediate Appellate Court*, 145 SCRA 238).

Considering however the surrounding circumstances, We can temper technical rules with substantive justice to grant the reliefs prayed for by the petitioners who have devoted long years of their lives to public service. Rules of procedure are intended to promote, not to defeat substantial justice, and therefore, they should not be applied in a very rigid and technical sense (*Calasiao Farmer's Cooperative Marketing Association, Inc. vs. Court of Appeals*, 106 SCRA 630). Also, it is within the inherent power and discretion of the Court to amend, modify or reconsider a final judgment when "because of supervening events it becomes imperative, in the higher interest of justice, to direct its modification in order to harmonize the disposition with the prevailing circumstances, or whenever it is necessary to accomplish the administration of justice." (*Galindez v. Rural Bank of Llanera*, 175 SCRA 132 [1989]). Besides no private individual will be financially prejudiced should we overturn the final judgment in this case, neither will the government be prejudiced because after all there is a price to pay for the obtaining of distributive justice.

Some members of the Court, however, frown at the thought of disregarding the principle of *res judicata* in the instant case. This frown is hopelessly unrealistic, cruel, and verily most unkind. Be it noted that this is not the first time in American or in Philippine jurisprudence when the principle of *res judicata* has been set aside in favor of substantial justice which is after all the avowed purpose of all law and jurisprudence. Thus, the following are in point:

"In this respect it has been declared that *res judicata*, as the embodiment of a public policy, must at times be weighed against competing interests, and must, on occasion, yield to other policies. The determination of the question is said to require a compromise, in each case of the two opposing policies, of the desirability of finality and the public interest in searching the right result." (46 Am. Jur. pp. 402-403).

"Underlying all discussion of the problem must be the principle of fundamental fairness in the due process sense. It has accordingly been adjudged that the public policy underlying the principle of the *res judicata* must be considered together with the policy that a party shall not be deprived of a fair adversary proceeding in which to present his case." (46 Am. Jur. p. 403).

"x x x *Res judicata* is to be disregarded if the application would involve the sacrifice of justice to technicality." (159 SCRA 264, *Republic v. De los Angeles*).

"Assuming in *gratia argumenti* that the prior judgment of dismissal with prejudice was validly rendered within the lawful discretion of the court and could not be considered as an adjudication on the merits, nonetheless the principle of *res judicata* should be disregarded if its application would involve the sacrifice of justice to technicality. The application of the said principle, under the particular facts obtaining, would amount to denial of justice and/or bar to a vindication of a legitimate grievance." (*Suarez vs. Court of Appeals*, 193 SCRA 183 [1991]).

"It is rather too late in the day for petitioner to question now the lack or excess of jurisdiction of the Appellate Court in rendering the said decision on the alleged ground that said Court is precluded from reversing the award of the lot on the ground of *res judicata*. It should be obvious to petitioner that the defense of *res judicata* when not interposed either in a motion to dismiss or in an answer is deemed waived." (*Vergara vs. Ruque*, 78 SCRA 312 [1977], citing *Philippine Coal Miner's Union vs. CEPOC*, 10 SCRA 784 [1964]).

"It is axiomatic that for the doctrine of *res judicata* to apply, it is essential that the prior judgment, invoked as a bar to a subsequent action or proceeding, be *inter alia* one on the merits. Equally perceptive is that if the

doctrine is not set up as a defense or ground of objection seasonably, it is deemed waived; it cannot be asserted for the first time on appeal." (Alvarez, Jr. vs. Court of Appeals, 158 SCRA 407 [1988].

"The principle of res judicata should be disregarded if its application would involve the sacrifice of justice to technicality and/or a bar to a vindication of a legitimate grievance." (Ronquillo vs. Marasigan, 5 SCRA 304, 312).

"The dispensation of justice and the vindication of legitimate grievance should not be barred by technicalities." (Santiago vs. Ramirez, 8 SCRA 157).

"Res judicata as a defense is waived when not interposed in a motion to dismiss or in an answer." (Vergara vs. Roque, 78 SCRA 312).

"Where res judicata was raised as a defense only in the motion for reconsideration, the same is already deemed waived." (Pulido vs. Pulido, 117 SCRA 16).

"If res judicata is not set up as a defense or ground of objection seasonably it is deemed waived and cannot be assailed for the first time on appeal." (Alvarez, Jr. vs. Court of Appeals, 158 SCRA 401).

Be it finally noted that if res judicata is not set up as a defense, it CANNOT be applied. Clearly this would be a WAIVER.

Going to the merits of the case, the then Minister of Budget refused to release the amount represented by the Ministry of Foreign Affairs to cover petitioners' claims for terminal leave credits, since they did not conform with Joint Ministry of Foreign Affairs - Ministry of the Budget Order No. 30-83 dated December 1, 1983, particularly Section 6 thereof, to wit:

"SEC. 6. The foreign service portion of the terminal leave credits earned prior to 1 January 1978, computed on the basis of highest salary received shall be converted to US dollars at the rate of P2.00 to \$1.00 pursuant to Department Order No. 35-67 dated 9 October 1967 and Sec. 10 of P.D. No. 1285, and shall be payable in Philippine pesos at the rate of exchange prevailing at the time of retirement, resignation, separation from the service or death." (Underscoring supplied)

Said Order which took effect on December 1, 1983 cannot apply retroactively to the claims of petitioners Teodoro and Zacarias, who retired on March 14, 1977 and June 20, 1980, respectively. The law applicable is Section 3 of Department Order No. 35-67 dated October 9, 1967, to wit:

"Section 3. Leave credits. Upon application, the money value of the leave credits earned abroad of any official, officer, or employee who retires, resigns or dies while in the service may be paid to him in foreign currency at the rate P2.00 to \$1.00. (Underscoring supplied).

It was not required that the foreign currency due the subject officer or employee be paid to him in Philippine pesos to be converted at the rate of exchange prevailing at the time of retirement.

Moreover, Section 10 of Presidential Decree No. 1285, which took effect on January 13, 1978, provides:

"Section 10. Accumulated leaves. Upon retirement, death or separation from the service of any officer or employee in the foreign service, unenjoyed vacation or sick leave credits shall be computed on the basis of actual salary and shall be paid in Philippine pesos and otherwise shall be on the same basis as home office personnel who retire in the Philippines: Provided, That any accumulated leaves earned as of the effectivity of this Decree may be paid to officers and employees leaving the service on the basis of applicable rules and regulations existing prior to this Decree." (Underscoring supplied).

As aptly observed by the Solicitor General:

"Hence, to apply Joint Ministry of Foreign Affairs - Ministry of the Budget Order No. 30-83 to accumulated leaves earned prior to the effectivity of Presidential Decree No. 1285, would in effect be an amendment of said Decree by the then Ministers of Foreign Affairs and Budget, which cannot be countenanced."

Surely a law, such as Presidential Decree No. 1285 cannot be amended by a simple Department Order.

In addition, since other officers and employees of the then Ministry of Foreign Affairs, who were similarly situated as the petitioners, were paid in Philippine pesos of the value in foreign currency of their terminal leave credits earned abroad at the rate of exchange at the time of payments thereof, then it will not only discriminate against but also cause injustice to petitioners to be paid in Philippine pesos the money value in US dollars of their terminal leave credits earned abroad at the rate of exchange then prevailing at the time of their retirements.

Premises considered, the Court Resolved to ORDER respondent Budget Secretary Carague to release to the Department of Foreign Affairs the sum of P306,141.00 for the payment of the balance due petitioners on their claims for terminal leave pay.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Bidin, Grino-Aquino, Medialdea, Regalado, and Nocon, JJ., concur.
Melencio-Herrera, Feliciano, and Davide, Jr., JJ., join J. Romero in her dissenting opinion.
Padilla, J., no part.

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DISSENTING OPINION

ROMERO, J.:

I vote to dismiss the petition.

The issues that confront the Court are the following:

Whether the petitioners' unused leave credits earned abroad should be paid at P2.00 to US\$1.00, as provided in Section 10, P.D. 1285 and Ministry of Foreign Affairs* Department Order No. 35-67 dated October 9, 1967 and whether the Minister of Budget** was correct in using the rate of exchange prevailing at the time of the retirement of the petitioners instead of at the time of payment as petitioners would insist.

The facts that res judicata has set in and the Court, in its Resolution dated March 26, 1987, DISMISSED the earlier petition docketed as G.R. No. 70242 for lack of merit; on September 10, 1987, DENIED with FINALITY the motion for reconsideration; on February 9, 1989, DENIED the second motion for reconsideration, on September 28, 1987, the Resolution of March 26, 1987 became final and executory; and on March 9, 1989, the same was recorded in the Book of Entries of Judgments are not open to question. The Solicitor General admits that the case has already long become final. For all intents and purposes, the instant case should ordinarily be already barred since the old case, G.R. 70242 and the present case, G.R. 96004, have identity of parties, subject matter, and cause of action. For the Court has already held, once a litigant's rights have been adjudicated in a valid final judgment of a competent court, he should not be granted an unbridled license to come back for another try.[1]

I have legitimate reason for my apprehension that my colleagues, in reopening a final judgment in the guise of tempering technical rules with substantive justice, have overthrown the doctrine of the law of the case or, even worse, set into motion serious budgetary complications because foreign service personnel who are similarly

situated would also have to be treated similarly, thus opening the floodgates for administrative, as well as judicial claims for deficiency payments which the Government may be in no position to make.

I also find quite strained the position and arguments of the majority, to wit:

"The then Minister of Budget refused to release the amount represented by the Ministry of Foreign Affairs to cover petitioners' claims for terminal leave credits, since they did not conform with Joint Ministry of Foreign Affairs - Ministry of the Budget Order No. 30-83 dated December 1, 1983, particularly Section 6 thereof, to wit:

'Sec. 6. The foreign service portion of the terminal leave credits earned prior to 1 January 1978, computed on the basis of highest salary received shall be converted to US dollars at the rate of P2.00 to \$1.00 pursuant to Department Order No. 35-67 dated 9 October 1967 and Sec. 10 of P.D. No. 1285, and shall be payable in Philippine pesos at the rate of exchange prevailing at the time of retirement, resignation, separation from the service or death.' (Underscoring supplied)

Said Order which took effect on December 1, 1983 cannot apply retroactively to the claims of petitioners Teodoro and Zacarias, who retired on March 14, 1977 and June 20, 1980, respectively. The law applicable is Section 3 of Department Order No. 35-67 dated October 9, 1967, to wit:

'Section 3. Leave credits. Upon application, the money value of the leave credits earned abroad of any official, officer, or employee who retires, resigns or dies while in the service may be paid to him in foreign currency at the rate of P2.00 to \$1.00.' (Underscoring supplied)

It was not required that the foreign currency due the subject officer or employee be paid to him in Philippine pesos to be converted at the rate of exchange prevailing at the time of retirement.

Moreover, Section 10 of Presidential Decree No. 1285, which took effect on January 13, 1978, provides:

'Section 10. Accumulated leaves. Upon retirement, death or separation from the service of any officer or employee in the foreign service, unenjoyed vacation or sick leave credits shall be computed on the basis of actual salary and shall be paid in Philippine pesos and otherwise shall be on the same basis as home office personnel who retire in the Philippines: Provided, That any accumulated leaves earned as of the effectivity of this Decree may be paid to officers and employees leaving the service on the basis of applicable rules and regulations existing prior to this Decree.' (Underscoring supplied).

As aptly observed by the Solicitor General:

'Hence, to apply Joint Ministry of Foreign Affairs - Ministry of the Budget Order No. 30-83 to accumulated leaves earned prior to the effectivity of Presidential Decree No. 1285, would in effect be an amendment of said Decree by the then Ministers of Foreign Affairs and Budget, which cannot be countenanced.'

Surely a law, such as Presidential Decree No. 1285 cannot be amended by a simple Department Order."

I am not persuaded.

I

First: The petitioners' allegations do not find support in law or jurisprudence.

The disallowed money value of petitioners' leave credits of P306,141.00 in the requested amount of the sum of P429,558.00 is due to the computation of the Ministry of Foreign Affairs at the prevailing exchange rate the time of payment (P20.00 to US\$1.00), instead of the prevailing foreign rate of exchange of P7.4285 to US\$1.00 as

certified by the Central Bank at the time of retirement of Ambassador Teodoro and Ms. Zacarias, as prescribed under the Joint Ministry Order No. 30-83 of the Office of the Budget and Management and the Ministry of Foreign Affairs dated December 1, 1983 based on Section 7, Presidential Decree No. 1285.

Section 7 of Presidential Decree No. 1285 reads:

"Section 7. Currency conversion. - The basic salary of foreign service personnel shall be paid in Philippine pesos or equivalent in foreign currency at the Central Bank foreign exchange conversion rate prevailing at the time of remittance. Fluctuations in exchange rate shall be compensated for through the overseas allowance established under this Decree Retirement benefits, accumulated leaves and other similar privileges shall be paid to foreign service personnel in pesos or equivalent in foreign currency using the prevailing Central Bank foreign exchange rate and subject to applicable Central Bank rules and regulations in cases where foreign service personnel retire abroad."[2] (Underscoring supplied)

Upon the other hand, Section 6 of the Ministry Order No. 30-83 dated December 1, 1983 reads:

"Section 6. The foreign service portion of the terminal leave credits earned prior to 1 January 1978, computed on the basis of highest salary received shall be converted to US dollars at the rate of P2.00 to US\$1.00 pursuant to Department Order No. 35-67 dated 9 October 1967 and Section 10 of P.D. No. 1285, and shall be payable in Philippine pesos at the rate of exchange prevailing at the time of retirement, resignation, separation from the service or death."[3] (Italics supplied)

Thus, under Ministry Order No. 30-83, the computation of the terminal leave benefits of MFA personnel retiring from government service earned prior to January 1, 1978 should be based on the salary received and the resultant amount in dollar converted to Philippine peso at the rate of exchange prevailing at the time of retirement considering that the right to such benefit has become vested on petitioners at the time of their retirement from the government service, petitioner Teodoro on March 14, 1977, and petitioner Zacarias on June 20, 1980.

Such statutory interpretation of Section 10, Presidential Decree No. 1285 is in accordance with Article 1250 of the Civil Code which states:

"Article 1250. In case an extraordinary inflation or deflation of the currency stipulated should supervene, the value of the currency at the time of the establishment of the obligation shall be the basis of payment unless there is an agreement to the contrary. (Emphases supplied).

There is no gainsaying the fact that the basis of payment of petitioners' money value of their terminal leave pay should be fixed at the value of the currency at the time of the establishment of the obligation -- which are the respective dates of retirement of petitioners because it is only then that the right to collect the same from the government as employer becomes vested.[4]

II

Second: The respondent Honorable Minister of Budget neither committed any grave abuse of discretion nor acted arbitrarily.

The authority of former Minister of Foreign Affairs Carlos P. Romulo to issue MFA Order 30-83 is inherent in his power as Department Head to promulgate rules to regulate the internal management of the agency he headed.

In the exercise of the above authority, MFA Order No. 30-83 was issued to fill in the details of the manner of payment of the benefit under P.D. 1285. Thus, it provided that the money value in dollars of terminal leaves shall be paid in Philippine pesos at the rate of exchange prevailing at the time of retirement. Clearly, there is nothing in MFA Order No. 30-83, which amended P.D. No. 1285.

The only reason why petitioners may have felt short-changed by MFA Order No. 30-83 is the fact that the rate of exchange as certified by the Central Bank at the time of their retirement was P7.4825 per dollar whereas the rate of exchange which may have prevailed at the time of payment increased to P20.00 per dollar.

III

Third: MFA Order No. 30-83 did not violate the equal protection clause.

Petitioners' claim that MFA Order No. 30-83 violates the equal protection and due process clauses of the Constitution is evidently baseless because the provisions of MFA Order No. 30-83 apply to all those who are similarly situated and did not single out the herein petitioners.

Even the cases of the other retirees cited by petitioners in the instant Motion for Reconsideration, i.e., Ambassador A. Yango, Jose Abad, Virginia B. Mendoza, Estelita B. Lozada and Felina Sta. Romana (Annexes A-E) would show that the money value of their leave credits earned abroad were also multiplied by the prevailing rates of exchange at the time of their retirement to wit: Ambassador Yango at P18.50; Josefa Abad at P18.72; Virginia Mendoza at P18.7098173; Estelita Lozada at P18.50; Felina V. Sta. Romana at P19.00 before the total amounts of terminal leave benefits in pesos were subsequently converted into dollars.[5]

IV

Fourth: Res Judicata is indeed applicable.

The Resolution of March 26, 1987, can no longer be modified, and rectified after it had become final and executory.[6] The minute resolutions and resolutions of the Supreme Court are "law" in their own right and as such, entitled to respect and obedience, and a presumption that it has been issued with justness.

In the case of Boiser v. National Telecommunications Commission,[7] Justice Edgardo Paras, the ponente of the majority opinion himself, categorically postulated that the doctrine of the "Law of the Case" which states that whatever has once been irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, x x x.[8]

Much as I want to temper justice with compassion considering that the petitioners are now in the twilight of their lives and in poor health, there are no supervening events that warrant the Court's reconsideration. What is more, the issue raised in G.R. No. 70242, can no longer be relitigated anew since said issue has already been resolved and finally laid to rest. "Hoc quidem per quam durum est sed ita lex scripta est."

I hold that the petition is "clearly and plainly barred by res judicata, and in such a manner as to leave no doubt or hesitation in the mind of my brethren." More importantly, petitioners have not convinced me that the herein case deserves to be reopened, by way of an exception to the well-entrenched doctrine of res judicata.

Res judicata, I submit, lies.

* Now Department of Foreign Affairs.

** Now Secretary of Budget.

[1] Santos v. Intermediate Appellate Court, No. L-74243, November 14, 1986, 145 SCRA 238.

[2] Rollo, p. 104.

[3] Ibid at 105.

[4] De Borja v. Vda. de Borja, No. L-28040, August 18, 1972, 46 SCRA 577; Dizon-Rivera v. Dizon, No. L-24561, June 30, 1970, 33 SCRA 554; Consolidated Textile Mills, Inc. v. Reparations Commission, No. L-23859, February 22, 1968, 22 SCRA 717.

[5] Rollo, p. 367.

[6] Gutierrez v. CA, G.R. No. 82475, January 28, 1991, 193 SCRA 437 citing Black's Law Dictionary, p. 1470 (Rev. 4th ed., 1968).

[7] G.R. No. 76592, January 13, 1989, 169 SCRA 198.

[8] 169 SCRA at 204.

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