

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**HOMEOWNERS SAVINGS AND LOAN
ASSOCIATION, INC.,**

Petitioner,

-versus-

**G.R. No. 97067
September 26, 1996**

**NATIONAL LABOR RELATIONS
COMMISSION and MARILYN
CABATBAT,**

Respondents.

X-----X

DECISION

HERMOSISIMA, JR., J.:

The Philippine Constitution, while inexorably committed towards the protection of the working class from exploitation and unfair treatment, nevertheless mandates the policy of social justice so as to strike a balance between an avowed predilection for labor, on the one hand, and the maintenance of the legal rights of capital, the proverbial hen that lays the golden egg, on the other. Indeed, we should not be unmindful of the legal norm that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.

In the case at bench, we tip the scales of justice in favor of the employer.

Private respondent Marilyn Cabatbat, a full-fledged Certified Public Accountant was employed and had started working as Branch Accountant in petitioner's branch office in San Carlos City (Pangasinan) on September 10, 1975. On December 18, 1981, she was re-assigned to the Sta. Barbara (Pangasinan) branch office of petitioner. After her brief stint in Sta. Barbara, she was returned to her old post in San Carlos City, likewise as Branch Accountant.

On September 14, 1984, petitioner through its Assistant Vice-President Johnny L. Tuason, issued Memorandum No. 0984^[1] addressed to all branches, announcing management's decision to promote five (5) junior officers and to move four (4) of its employees to new assignments. The latter group of employees were made to retain their original items. Private respondent was among those moved from her old post in San Carlos Branch. She was transferred to the petitioner's branch in Urdaneta, also in Pangasinan. Both the promoted and the transferred employees received corresponding increases in their salaries.

On the same day, private respondent received a separate memorandum^[2] from J.L. Tuason informing her of her new assignment to Urdaneta Branch pursuant to Memorandum No. 0984.

Fellow employees Flordeliza Galvan, Wilma Taaca and Ethel Cariaga were also notified separately of their new assignments.^[3]

On the other hand, Reynaldo Bondoc, Nelson Nieva, Laureta Soliven, Leonida Cabrera and Leonor Espinoza received notices of promotion to various positions.^[4]

In a letter, dated October 3, 1984, private respondent requested deferment of her new assignment, citing as her reason the fact that she was on her sixth month of pregnancy. The request was granted.^[5]

On February 18, 1985,^[6] after private respondent's delivery, petitioner again ordered private respondent to report to her new assignment. Private respondent again requested that the order to re-assign her be

reconsidered because of some very personal reasons, particularly based on the need to maintain “harmonious relationship with her parents-in-law” with whom she then lives.^[7] On February 19, 1985 she wrote AVP Tuason protesting her new assignment and reiterated her appeal for the reconsideration of the order for her transfer maintaining that “my new assignment would entail additional expenses and physical exhaustion as Urdaneta is too far for me to commute everyday.”^[8]

On February 20, 1985, petitioner issued the following Memorandum No. 0285-10,^[9] addressed to private respondent:

“MEMO NO.: 0285-10
TO: MARILYN CABATBAT
DATE: FEBRUARY 20, 1985
SUBJECT: ASSIGNMENT TO URDANETA BRANCH

This has reference to your letters wherein you signified your protest on your assignment to Urdaneta Branch as its Branch Accountant due to personal reasons.

Let it be known that your transfer is due to the exigency to uplift the operational efficiency of the branch. Record would show that your assignment to Urdaneta Branch was required September, 1984 yet which was deferred for some reasons even considering your maternity leave. Your continuous failure to report to Urdaneta Branch has caused deterioration in its record keeping and a deficiency in its supervision.

It may be of some help to you if you will spend this coming days until February 25, 1985 to try to settle any personal problems that you may have, and reconsider your position on this matter. We, however, expect you to report on February 26, 1985 to Urdaneta Branch in time for the month-end reportorial requirements.

We are fervently hoping that this matter will be settled.

s/J. L. Tuason
t/J. L. TUASON
Asst. Vice-President”

On February 25, 1985, private respondent wrote petitioner a letter, this time bluntly refusing her assignment on the pretext that her new assignment was a promotion, in which case, she has the option to reject or accept the same.^[10]

In the face of private respondent’s intransigence, a warning was issued to her by the petitioner on February 27, 1985,^[11] that her continued defiance of the management’s directive shall be dealt with in accordance with law. Despite this warning, private respondent still continued reporting to the San Carlos Branch. The petitioner, still acting with patience and fortitude, advised her in a memorandum, dated February 28, 1985,^[12] that her attendance at the San Carlos Branch was not a valid report for work. And, on March 1, 1985,^[13] she was instructed once again to report immediately to the Urdaneta Branch because her services were badly needed there.

Petitioner, still unable to perceive a positive response from the private respondent, was constrained to issue the following Memorandum No. 0385^[14] on March 8, 1985:

“MEMO NO.: 0385
TO: MARILYN CABATBAT
DATE: MARCH 08, 1985
SUBJECT: ASSIGNMENT TO URDANETA BRANCH

It was brought to our knowledge that you have not assumed your assignment with Urdaneta Branch as its Branch Accountant inspite of the numerous notices given you. And notwithstanding the existing policy of the Bank for you to be reimbursed the actual cost of transportation as a result of your reassignment from San Carlos Branch to Urdaneta Branch.

Your refusal to obey the directive of the Bank warrant the termination of your employment.

Please reply within five (5) days why you should not be terminated.

s/J. L. Tuason
t/ J. L. TUASON
Asst. Vice-President”

Finally, on March 14, 1985,^[15] private respondent was issued a notice of termination. The fact of termination was properly reported to the then Ministry of Labor and Employment.^[16]

Private respondent then filed a complaint for illegal dismissal against the petitioner. Executive Labor Arbiter Sotero Tumang dismissed the complaint in a decision, dated June 26, 1985, the dispositive portion of which states:

“WHEREFORE, IN VIEW OF THE FOREGOING, this case is hereby ORDERED DISMISSED for lack of merit.

San Fernando, La Union for Dagupan City, June 26, 1985.”^[17]

Private respondent appealed to the National Labor Relations Commission.

The NLRC reversed the findings of the Executive Labor Arbiter, in a decision rendered on November 26, 1990. The NLRC decreed:

“WHEREFORE, the appealed Decision is hereby REVERSED and SET ASIDE and another one ENTERED ordering the HOMEOWNERS SAVINGS and LOAN ASSN., Inc. to immediately reinstate Marilyn Cabatbat to her former positions with full backwages and other benefits for a period of three (3) years from her illegal dismissal and without loss of seniority rights and other privileges.

SO ORDERED.”^[18]

A Motion for Reconsideration having been filed by petitioner, the NLRC, in a Resolution dated January 17, 1991, peremptorily denied it.

Hence, this petition.

The basic issue raised in this petition is whether or not public respondent NLRC committed grave abuse of discretion amounting to lack of jurisdiction when it decided that Marilyn Cabatbat was illegally dismissed by the petitioner, it having given credence to private complainant's claim that her re-assignment from the San Carlos Branch to Urdaneta Branch involved a promotion which she can rightfully decline without being guilty of willful disobedience, a just cause for termination.

We find merit in the petition.

Petitioner avers that private respondent's re-assignment to the Urdaneta Branch was merely a transfer to another post which she cannot validly refuse without incurring the concomitant disciplinary measures the petitioner corporation may deem fit to impose, which in this case was termination. Private respondent maintains otherwise. According to her, the new assignment was nothing less than a promotion which, under existing jurisprudence, she could not be compelled to accept. Petitioner's submission obviously holds water. The memorandum, dated September 14, 1984, issued by the Assistant Vice-President J. L. Tuason addressed to the private respondent informing her of her new assignment reads, viz:

“TO: MARILYN CABATBAT
DATE: SEPTEMBER 14, 1984
SUBJECT: NEW ASSIGNMENT

To streamline our operation and as a recognition of your demonstrated management capabilities you are assigned to URDANETA BRANCH as its BRANCH ACCOUNTANT to assume broader responsibilities.

As a BRANCH ACCOUNTANT, your monthly remuneration shall be as follows:

OLD	MANDATORY	MERIT	NEW
	ADJUSTMENT	INCREASE	

Basic Pay	P1,430.00	-0-	P120.00	P1,550.00
COLA	<u>270.00</u>	<u>P150.00</u>	<u>-0-</u>	<u>420.00</u>
TOTALS	P1,700.00	P150.00	P120.00	P1,970.00
	=====	=====	=====	=====

The above salary shall be retroactive June 16, 1984. You may draw any differential which you have not received.

Management expects you to reciprocate by working towards the attainment of its objective, promote professionalism amongst the bank staff and uphold the interest of the Bank.

s/ J. L. Tuason
t/ J. L. TUASON”^[19]

This memorandum, however, must be read in light of Memorandum No. 0984 addressed to all branches of petitioner corporation announcing all the promotions and new assignments to be implemented by the petitioner effective September 14, 1984. The said memorandum appears in this wise:

“MEMO NO.: 0984

TO: ALL BRANCHES

DATE: SEPTEMBER 14, 1984

SUBJECT: BRANCHES PROMOTIONS AND NEW ASSIGNMENTS

In line with the Bank’s commitment to streamline its operation and give recognition to deserving officers and staff, management wish to announce the following promotions and movements:

A. PROMOTIONS:

JUNIOR OFFICERS BRANCH NEW DESIGNATION

- | | | |
|--------------------|-------------------|-------------------|
| 1. Reynaldo Bondoc | Apalit Branch | Asst. Manager |
| 2. Nelson Nieva | Head Office | Asst. Manager |
| 3. Laureta Soliven | Urdaneta Branch | Asst. Manager |
| 4. Leonida Cabrera | San Carlos Branch | Branch Accountant |
| 5. Leonor Espinoza | San Carlos Branch | Cashier |

B. MOVEMENTS FROM TO

- | | | |
|----------------------|-------------------|---|
| 1. Marilyn Cabatbat | San Carlos Branch | Branch Accountant
Urdaneta Branch |
| 2. Flordeliza Galvan | Urdaneta Branch | Officer-In-Charge
Bayambang Moneyshop |
| 3. Wilma Taaca | Urdaneta Branch | Officer-In-Charge
Binalonan Moneyshop |
| 4. Ethel Cariaga | San Carlos Branch | Officer-In-Charge
Pozorrubio Moneyshop |

We enjoin all branch staff to give their respect and support to the above-named officers and staff.

s/ J. L. Tuason
t/ J. L. TUASON
Asst. Vice President”^[20]

A cursory reading of these two memoranda unmistakably shows that Marilyn Cabatbat is one among the four employees that was considered for “Movement” from the San Carlos Branch to the Urdaneta Branch with no corresponding change in her position as Branch Accountant. Her name does not appear below the heading “Promotions” which enumerates the five junior officers promoted to new positions, i.e., three Assistant Managers, one Branch Accountant and one Cashier. Henceforth, the clear intention of the petitioner corporation was merely to transfer, and not promote, the private respondent to a new post.

The fact that private respondent, together with the other three (3) employees who were transferred, were given salary increases should not be construed to mean that they were promoted. Promotion, as we defined in *Millares vs. Subido*,^[21] is “the advancement from one position to another with an increase in duties and responsibilities as

authorized by law, and usually accompanied by an increase in salary.” Apparently, the indispensable element for there to be a promotion is that there must be an “advancement from one position to another” or an upward vertical movement of the employee’s rank or position. Any increase in salary should only be considered incidental but never determinative of whether or not a promotion is bestowed upon an employee. This can be likened to the upgrading of salaries of government employees without necessarily conferring upon them the concomitant elevation to higher positions. Here, although private respondent was moved from the San Carlos Branch to the Urdaneta Branch, she retained her old position as Branch Accountant. This is only a lateral movement which does not amount to a promotion, but a mere transfer.

Private respondent, however, insists that based on the separate memorandum issued to her by the petitioner on the same day of September 14, 1984, the petitioner corporation really intended to promote her, since said document had the marks and bearings of a notice of promotion. The recognition by the petitioner of private respondent’s “demonstrated management capabilities” and the expectation of reciprocation from her “by working towards the attainment of the company’s objective,” denote nothing else than that it was a promotion.

These asseverations of private respondent are too puerile to merit serious consideration from this Court. A close scrutiny of the separate memoranda given to fellow employees Flordeliza Galvan, Wilma Taaca and Ethel Cariaga, who were likewise transferred to other branches, expose identical notices addressed to each of them. On the other hand, the notices of promotion given to Reynaldo Bondoc, Nelson Nieva, Laureta Soliven, Leonida Cabrera and Leonor Espinoza were worded in such a manner as to express the unequivocal intention of management to promote these persons to higher positions. Herein is a sample of such notice of promotion similarly worded for the five promoted employees:

“TO:	REYNALDO BONDOC
DATE:	SEPTEMBER 14, 1984
SUBJECT:	PROMOTION

In recognition of your commendable performance and demonstrated management capabilities you are promoted to the position of Assistant Manager.

As an Assistant Manager your monthly remuneration shall be as follows:

	OLD	MANDATORY ADJUSTMENT	MERIT INCREASE	NEW
Basic Pay	P1,380.00	-0-	P220.00	P1,600.00
COLA	<u>270.00</u>	<u>150.00</u>	<u>-0-</u>	<u>420.00</u>
TOTALS	P1,650.00	P150.00	P220.00	P2,020.00
	=====	=====	=====	=====

The above salary shall be retroactive June 16, 1984. You may draw any differential which you have not received.

Management expects you to reciprocate by working towards the attainment of its objective, promote professionalism amongst the bank staff and uphold the interest of the Bank.

s/ J. L. Tuason
t/ J. L. TUASON
Asst. Vice President”^[22]

Were we to follow the misleading contention of private respondent that the notice she received was also a notice of promotion, and that Memorandum No. 0684 should not be given much weight, then the inevitable conclusion would have to be that not only private respondent, but even Galvan, Taaca and Cariaga were likewise promoted rendering at naught the evident intention of the petitioner corporation to promote only some, but not all, of the nine employees mentioned in Memorandum No. 0984, which matter the petitioner is allowed wide discretion under the law.

An owner of a business enterprise is given considerable leeway in managing his business because it is deemed important to society as a whole that he should succeed. Our law, therefore, recognizes certain

rights as inherent in the management of business enterprises. These rights are collectively called management prerogatives or acts by which one directing a business is able to control the variables thereof so as to enhance the chances of making a profit.^[23] Together, they may be taken as the freedom to administer the affairs of a business enterprise such that the costs of running it would be below the expected earnings or receipts. In short, the elbow room in the quest for profits.^[24]

Specifically, the scope of these prerogatives was laid down in a number of cases, one of which was San Miguel Brewery Sales Force Union (PTGWO) vs. Ople,^[25] where we held that “[E]xcept as limited by special laws, an employers is free to regulate, according to his own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, lace and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of work.”

Of relevant significance in this case is the right of the employer to transfer employees in their work station. In Philippine Japan Active Carbon Corporation vs. National Labor Relations Commission,^[26] this Court made the pronouncement that it is the employer’s prerogative, based on its assessment and perception of its employees’ qualifications, aptitudes and competence to move them around in the various areas of its business operations in order to ascertain where they will function with maximum benefit to the company. The rationale for this rule is that an employee’s right to security of tenure does not give him such a vested right in his position as would deprive the company of its prerogative to change his assignment or transfer him where he will be most useful. Of course, the managerial prerogative to transfer personnel must be exercised without grave abuse or discretion and putting to mind the basic elements of justice and fair play.^[27] Having the right should not be confused with the manner in which that right must be exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. Nor when the real reason is to penalize an employee for his union activities and thereby defeat his right to self-organization. But the transfer can be upheld when there is no showing that it is

unnecessary, inconvenient and prejudicial to the displaced employee.^[28]

The case at bench is bereft of any circumstance that would indicate that petitioner's decision to transfer private respondent to the Urdaneta Branch was made with grave abuse of discretion. As creditably explained by management, the reason for her transfer was "due to the exigency to uplift the operational efficiency" of the Urdaneta Branch,^[29] and that her continued failure to report to said branch has "continuously exposed the bank to lack of control in its cash operation" and has also "resulted to a backlog in its recordkeeping and delay in the accomplishment of reportorial requirements," all of which fall under the scope of the responsibilities of the Branch Accountant.^[30] These matters are not disputed by the private respondent. Neither is there any showing in this case that Marilyn's transfer was only being used by the petitioner to camouflage a sinister scheme of management to rid itself of an undesirable worker in the person of private respondent. On the contrary, petitioner corporation, in giving private respondent her new assignment, even recognized her "demonstrated management capabilities," which, however, was unfortunately misunderstood, wittingly or unwittingly, by the private respondent to mean a promotion which she can decline. Far-fetched, too, is the notion that Marilyn's transfer was only meant to penalize her for her union activities and thereby defeat her right to self-organization. The records are devoid of any piece of evidence that would show that Marilyn was involved in any union activity, or if there was any union at all in the petitioner corporation to which private respondent is affiliated, which could thus impel petitioner to impose sanctions against her. All things considered, the transfer of private respondent from the San Carlos Branch to the Urdaneta Branch was made in good faith and was not discriminatory.

Private respondent pleads that her position as Branch Accountant in the San Carlos Branch is very conducive, favorable and convenient to her and that her new assignment in Urdaneta would only entail additional expenses and physical exhaustion, since Urdaneta is about thirty (30) kilometers away from her place of residence in Malabago, Calasiao, Pangasinan. San Carlos City is only five (5) or six (6) kilometers away from her residence in Malabago. In fine, she

maintains that her transfer to Urdaneta would serve her nothing less than inconvenience in the course of her employment. And since a valid transfer must not be shown to be unreasonable, inconvenient, nor prejudicial to the employee, her transfer to the Urdaneta Branch cannot be said to be a valid exercise of petitioner's management prerogative.

We are not persuaded.

The acceptability of the proposition that transfer made by an employer for an illicit or underhanded purpose — i.e., to defeat an employee's right to self-organization, to rid himself of an undesirable worker, or to penalize an employee for union activities — cannot be upheld is self-evident and cannot be gainsaid. The difficulty lies in the situation where no such illicit, improper or underhanded purpose can be ascribed to the employer, the objection to the transfer being grounded solely upon the personal inconvenience or hardship that will be caused to the employee by reason of the transfer. What then?^[31]

This was the very same situation we faced in *Phi. Telegraph and Telephone Corp. vs. Laplana*.^[32] In that case, the employee, Alicia Laplana, was a cashier at the Baguio City Branch of PT&T who was directed to transfer to the company's branch office at Laoag City. In refusing the transfer, the employee averred that she had established Baguio City as her permanent residence and that such transfer will involve additional expenses on her part, plus the fact that an assignment to a far place will be a big sacrifice for her as she will be kept away from her family which might adversely affect her efficiency. In ruling for the employers, the Court upheld the transfer from one city to another within the country as valid as long as there is no bad faith on the part of the employer. We held then:

“Certainly the Court cannot accept the proposition that when an employee opposes his employer's decision to transfer him to another work place, there being no bad faith or underhanded motives on the part of either party, it is the employee's wishes that should be made to prevail.”^[33]

Surely, private respondent Marilyn Cabatbat is better situated than Alicia Laplana in the above-cited case. The distance between her new assignment in Urdaneta, Pangasinan, and her place of residence in Malabago, Calasiao, Pangasinan, is only about thirty (30) kilometers. On the other hand, the distance between Baguio City and Laoag City is definitely beyond thirty (30) kilometers. Since we ruled that the transfer of Alicia Laplana from Baguio to Laoag was valid, we see no reason to resolve that the transfer of Marilyn from San Carlos to Urdaneta is improper, absent any showing of bad faith on the part of petitioner corporation in effecting the transfer. Private respondent's refusal to obey the transfer order constitutes willful disobedience of a lawful order of her employer sanctioned under Article 282^[34] of the Labor Code and, therefore, warrants dismissal.

Finally, private respondent submits that the manner of her dismissal was illegal for being made without due process. While she admits that there had been an exchange of letters between her and her employer, she was not formally charged and given the full opportunity to be heard.

The argument is unmeritorious. What the law requires, as we pointed out in *Manggagawa ng Komunikasyon sa Pilipinas vs. NLRC and PLDT*,^[35] is for the employer to inform the employee of the specific charges against him and to hear his side and defenses. This does not, however, mean a full adversarial proceeding. Litigants may be heard through: (1) pleadings, written explanations, position papers, memorandum; (or) (2) oral argument. In both instances, the employer plays an active role. He must provide the employee with the opportunity to present his side and answer the charges, in substantial compliance with due process. Actual adversarial proceeding becomes necessary only for clarification or when there is a need to propound searching questions to unclear witnesses. This is a procedural right which the employee must, however, ask for. It is not an inherent right. Summary proceedings may be conducted. This is to correct the common but mistaken perception that procedural due process entails lengthy oral argument. Non-verbal devices such as written explanations, affidavits, position papers or other pleadings can establish just as clearly and concisely an aggrieved party's defenses. What is essential is ample opportunity to be heard. Management

must accord the employee every kind of assistance to prepare adequately for his defense.

No doubt, private respondent was accorded due process. No less than seven (7) memoranda were issued to private respondent urging her to follow the directive of management transferring her to the Urdaneta Branch coupled with a generous offer by the petitioner to pay or reimburse her for the actual cost of transportation that she may incur as a result of the new assignment.^[36] Unfortunately, private respondent stubbornly chose to turn a deaf ear to these notices. Ultimately, she has no one to blame but herself. The law, in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer.^[37]

WHEREFORE, the Petition is **GRANTED** and the Decision of public respondent NLRC dated November 26, 1990 is hereby nullified and set aside. The Decision of the Executive Labor Arbiter dated June 26, 1985 is reinstated.

No pronouncement as to costs.

SO ORDERED.

Padilla, Bellosillo, Vitug and Kapunan, JJ., concur.

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- [1] Rollo, p. 17.
 - [2] Rollo, p. 23.
 - [3] Rollo, p. 24-26.
 - [4] Rollo, pp. 18-22.
 - [5] Rollo, p. 28.
 - [6] Rollo, p. 29.
 - [7] Rollo, p. 30.
 - [8] Rollo, p. 31.
 - [9] Rollo, p. 32.
 - [10] Rollo, p. 33.
 - [11] Rollo, p. 34.
 - [12] Rollo, p. 35.
 - [13] Rollo, p. 36.
 - [14] Rollo, p. 37.
 - [15] Rollo, p. 38.
 - [16] Rollo, p. 39.

- [17] Rollo, p. 47.
- [18] Rollo, p. 54.
- [19] Rollo, p. 23.
- [20] Rollo, p. 17.
- [21] 20 SCRA 954, 962 [1967].
- [22] Rollo, p. 18.
- [23] *Chu vs. National Labor Relations Commission*, 232 SCRA 764, 767 [1994].
- [24] *Ibid.*, citing Fernandez and Quiason, *The Law on Labor Relations*, 1963 ed., p. 43.
- [25] 170 SCRA 25, 27-28 [1989], citing *NLU vs. Insular La Yebana Co.*, 2 SCRA 924; *Republic Savings Bank vs. CIR*, 21 SCRA 226, 235.
- [26] 171 SCRA 164, 168 [1989].
- [27] *Yuco Chemical Industries, Inc., vs. Ministry of Labor and Employment*, 185 SCRA 727, 730 [1990], citing *International Harvester Macleod vs. Intermediate Appellate Court*, 149 SCRA 641 [1987].
- [28] *Ibid.*, citing *Phil. Japan Active Carbon Corp. vs. NLRC*, *supra*.
- [29] Rollo, p. 32.
- [30] Rollo, p. 36.
- [31] *Phil. Telegraph and Telephone Corp. vs. Laplana*, 199 SCRA 485, 493 [1991].
- [32] *Supra*.
- [33] *Supra*, at 494-495.
- [34] ART. 282. Termination by employer — An employer may terminate an employment for any of the following just causes:
(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- x x x
- [35] 206 SCRA 109, 114-115 [1992], citing *De Leon vs. NLRC*, 100 SCRA 691 [1980].
- [36] Rollo, p. 37.
- [37] *Colgate Palmolive Philippines, Inc. vs. Ople*, 163 SCRA 323, 331 [1988].