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For another, that respondent should pay petitioner the amounts of the altered treasury warrants is the logical consequence of the MTC's holding that private respondent is civilly liable for the treasury warrants subject of the case.[11]

WHEREFORE, the decision of the Regional Trial Court of Naga City (Branch 21) is REVERSED.

SO ORDERED.

Bellosillo (Chairman), Puno, Quisumbing, and *Buena, JJ.,* concur.

FIRST DIVISION

[A.M. No. RTJ-97-1371. January 22, 1999]

BALTAZAR D. AMION, *complainant, vs.* **JUDGE ROBERTO S. CHIONGSON, Branch 50, Regional Trial Court, Bacolod City,** *respondent.*

SYNOPSIS

A verified complaint was filed by Baltazar D. Amion charging Judge Roberto S. Chiongson with ignorance of the law and oppression. The complaint was relative to a murder case pending before his court, in which the complainant is the accused. The allegations against respondent judge are premised on his appointment of a counsel *de oficio* for accused-complainant despite the latter's objection thereto on the ground that he had his own retained counsel. In his comment, respondent judge alleged that his appointment of a counsel *de oficio* to represent the accused-complainant is justified because of the vexatious

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[11] *Republic Surety and Insurance Co., Inc. v. Intermediate Appellate Court*, 152 SCRA 309 (1987).

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and oppressive delay on the latter's part who has been represented by a counsel *de parte* who refuses or fail to appear during hearings. He averred that the records of the case will show that the accused-complainant and his lawyers have employed every means fair, but mostly foul, to delay the resolution of the criminal case.

The Court found that the accused-complainant has been the oppressor while respondent judge appears to be the oppressed. Through the course of the proceedings in the subject criminal case, accused-complainant had filed several Motions for Inhibition, a Petition for *Certiorari* and *Mandamus*, and this administrative complaint with the view of delaying the eventual disposition of the case. The actuation of respondent judge in the murder case does not warrant reproach and reprimand, but in fact, merits the acknowledgment and approval of the Supreme Court. Such manifestation of zeal clearly shows respondent judge's ardent determination to expedite the case and render justice. The Court resolved to dismiss the administrative complaint against the respondent judge, imposed a fine of ₱5,000.00 on accused-complainant, and admonished said accused-complainant for filing a malicious and unmeritorious complaint against the resopndent judge.

SYLLABUS

1. **CONSTITUTIONAL LAW; BILL OF RIGHTS; PREFERENCE IN THE CHOICE OF COUNSEL, CANNOT PARTAKE OF A DISCRETION SO ABSOLUTE AND ARBITRARY AS WOULD MAKE SUCH CHOICE OF COUNSEL REFER EXCLUSIVELY TO THE PREDILECTION OF THE ACCUSED; RATIONALE.** — An examination of related provisions in the Constitution concerning the right to counsel, will show that the "preference in the choice of counsel" pertains more aptly and specifically to a person under investigation rather than one who is the accused in a criminal prosecution. Even if we were to extend the application of the concept of "preference in the choice of counsel" to an accused in a criminal prosecution, such preferential discretion cannot partake of a discretion so absolute and arbitrary as would make the choice of counsel refer exclusively to the predilection of the accused. As held by this Court in the case of *People vs. Barasina*, (229 SCRA 450),

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Withal, the word "preferably" under Section 12(1), Article 3 of the 1987 Constitution does not convey the message that the choice of a lawyer by a person under investigation is exclusive as to preclude other equally competent and independent attorneys from handling his defense. If the rule were otherwise, then, the tempo of a custodial investigation, will be solely in the hands of the accused who can impede, nay, obstruct the progress of the interrogation by simply selecting a lawyer, who for one reason or another, is not available to protect his interest. This absurd scenario could not have been contemplated by the framers of the charter." Applying this principle enunciated by the Court, we may likewise say that the accused's discretion in a criminal prosecution with respect to his choice of counsel is not so much as to grant him a plenary prerogative which would preclude other equally competent and independent counsels from representing him. Otherwise, the pace of a criminal prosecution will be entirely dictated by the accused to the detriment of the eventual resolution of the case.

2. ID.; ID.; RIGHT TO DUE PROCESS; A PARTY CANNOT FEIGN DENIAL THEREOF WHEN HE HAD THE OPPORTUNITY TO PRESENT HIS SIDE; CASE AT BAR. — Accused-complainant was not, in any way, deprived of his substantive and constitutional right to due process as he was duly accorded all the opportunities to be heard and to present evidence to substantiate his defense but he forfeited this right, for not appearing in court together with his counsel at the scheduled hearings. Accused-complainant had more than sufficient time and every available opportunity to present his side which would have led to the expeditious termination of the case. A party cannot feign denial of due process when he had the opportunity to present his side. Moreover, there is no denial of the right to counsel where a counsel *de oficio* was appointed during the absence of the accused's counsel *de parte* pursuant to the court's desire to finish the case as early as practicable under the continuous trial system. Thus, it has been held by this Court in the case of *Lacambra vs. Ramos*: (232 SCRA 435) "the Court cannot help but note the series of legal maneuvers resorted to and repeated importunings of the accused or his counsel, which resulted in the protracted trial of the case, thus making a mockery of the judicial process, not to mention the injustice caused by the delay to the victim's family." Undoubtedly, it was accused-complainant's own strategic machinations which brought upon

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the need for the appointment of a counsel *de oficio* in as much as the criminal case had been dragging on its lethargic course.

3. **LEGAL AND JUDICIAL ETHICS; CODE OF JUDICIAL CONDUCT; JUDGES; SHOULD ADMINISTER JUSTICE IMPARTIALLY AND WITHOUT DELAY; CASE AT BAR.**— The actuation of respondent judge in this murder case does not warrant reproach and reprimand, but in fact, merits the acknowledgment and approval of this Court. Such manifestation of zeal clearly show respondent judge's ardent determination to expedite the case and render justice. The Code of Judicial Conduct mandates that a judge should administer justice impartially and without delay. A judge should always be imbued with a high sense of duty and responsibility in the discharge of his obligation to promptly administer justice.

D E C I S I O N

MARTINEZ, *J.*:

A verified complaint dated August 29, 1996[1] was filed by Baltazar D. Amion with this Court on October 7, 1996 charging Judge Roberto S. Chiongson, Regional Trial Court (RTC), Branch 50, Bacolod City with Ignorance of the Law and Oppression relative to Criminal Case No. 94-159772 pending in said trial court and in which complainant is the accused.

The allegations against respondent judge are premised on his appointment of a counsel *de oficio* for accused-complainant despite the latter's objection thereto on the ground that he had his own retained counsel in the person of Atty. Reynaldo C. Depasucat.

Accused-complainant explains that respondent judge appointed another lawyer in the person of Atty. Manuel Lao Ong of the Free Legal Aid to act as counsel *de oficio* for the scheduled hearing of the aforecited criminal case on March 28, and 29 1996. He further avers that his retained counsel was ready for hearing on said dates but on March 27, 1996, the day before

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[1] *Rollo*, p. 1-6.

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the scheduled hearing, he was informed that Atty. Depasucat was ill.

It was for this reason that accused-complainant was not represented by his defense lawyer in the scheduled hearing which prompted respondent judge to appoint Free Legal Aid lawyer Atty. Manuel Lao Ong. Notwithstanding complainant-accused's vehement opposition, respondent judge proceeded with the trial on March 28, 1996 with Atty. Ong representing the complainant-accused as counsel *de oficio*. He also claims that Atty. Ong did not have sufficient knowledge of the case and that no prior conference was held between said counsel *de oficio* and himself.

Complainant-accused asserts that the aforesaid incidents constitute a clear violation of his right to due process and a deprivation of his constitutional and statutory right to be defended by counsel of his own choice.

Consequently, complainant-accused filed a Manifestation and Urgent Motion[2] stating therein that he is not accepting the legal services of counsel *de oficio* Atty. Ong since he can afford to hire a counsel *de parte* of his own choice. He further states that respondent judge is not fair and just and does not have the cold neutrality of an impartial judge. He likewise asseverates that respondent judge is ignorant of the basic law which makes him unfit to be a judge in any judicial tribunal.

Complainant-accused also alludes oppression to respondent judge when the latter was still a Municipal Trial Judge of MTCC, Branch 3, Bacolod City. Complainant was then the offended party in a criminal case for Slander and it took a year before respondent judge decided to dismiss the same. He complains that now that he is the accused in Criminal Case No. 94-15772, respondent judge appears to be "very active" and wants the case to be terminated immediately.

In addition, accused-complainant charges respondent judge with gross ignorance of the law when the latter, as then municipal

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[2] *Rollo*, pp. 9-12, Annex "B."

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trial judge of Bacolod City, heard Criminal Case No. 55099 for violation of B.P. 22 against accused-complainant in the absence of his counsel.

In a resolution dated March 12, 1997,[3] this Court required respondent judge to file his Comment on the aforementioned charges.

Judge Roberto S. Chiongson, in his Comment dated April 21, 1997,[4] explained that accused-complainant would not have filed the administrative case had he acceded to the latter's plea for his inhibition which he denied, there being no ground therefor. He claimed that accused-complainant is a police officer charged in Criminal Case No. 94-15772 for having allegedly killed a fellow policeman on January 24, 1994. From the time he assumed office as Presiding Judge of said court on November 27, 1995, other than the arraignment of accused- complainant on September 25, 1995 before Judge Emma Labayen (former judge of said court) in which accused-complainant pleaded not guilty, the case has not moved.

When respondent judge set the case for hearing on January 9, 1996, trial was not held because accused-complainant's counsel Atty. Depasucat, was not feeling well. The hearing was reset to January 19, 1996 with a warning that no further postponement would be entertained. On said date of hearing, Atty. Depasucat again failed to appear in court. In order to avoid further delay, the court appointed Atty. Apollo Jacildo of the Public Attorney's Office (PAO) as counsel *de oficio*. Atty. Jacildo, however, filed a Manifestation explaining that it is the policy of their office not to represent a party who has retained the services of a counsel of his own choice.

At the next scheduled hearing of February 21, 1996,[5] accused-complainant's counsel *de parte* still did not show up in court, thus, prompting private complainant Mrs. Antonietta Vaflor (the

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[3] *Rollo*, p. 19.

[4] *Rollo*, p. 23.

[5] *Rollo*, pp. 37-38, Annex "C".

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victim's wife) to speak in open court and pour out all her frustration about the long delay in the resolution of the case.

In view of the fact that Mrs. Vaflor and another government witness, PO3 Richard Dejores, both reside at Escalante, about 70 to 80 kilometers from Bacolod City, and that the appearance of Atty. Depasucat remained uncertain, Judge Chiongson appointed Atty. Manuel Lao-Ong from the Free Legal Aid Office to represent accused-complainant. The court, however, made it of record that the appointment of Atty. Ong was without prejudice to the appearance of counsel *de parte*.[6] Due to the continued absence of Atty. Depasucat, the counsel *de parte*, Atty. Ong, represented the accused-complainant at the March 28, 1996 hearing which was opposed by the accused in a Manifestation and Motion filed on March 29, seeking the nullification of the March 28, 1998 hearing and the inhibition of Judge Chiongson. The hearings were then rescheduled on May 13 and 17, 1996.

On May 8, 1996, accused-complainant's counsel, Atty. Depasucat, filed a motion for postponement alleging that the motion for inhibition should be resolved and that he would not be available on the rescheduled dates for hearings as he would be out of the country during those times.

An order denying the accused-complainant's Motion for Inhibition and Motion to Set Aside the proceedings of March 28, 1996 was issued by the court on July 18, 1996 on the ground that the claim of bias and prejudice was without legal basis.[7]

At the scheduled hearing on August 1, 1996, Atty. Depasucat asked the court that he be allowed to withdraw as counsel de parte of the accused-complainant causing further delay. The trial of the case was again reset to September 2, 5, and 6, 1996 with a warning that the court will not grant any further postponement and that if the accused-complainant was still without counsel, a counsel *de oficio* will be appointed.

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[6] *Rollo*, p. 39, Annex "D".

[7] *Rollo*, p. 41, Annex "F".

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Thereafter, the accused-complainant engaged the services of different counsels who continued to adopt the dilatory tactics utilized by the previous counsel *de parte.*

Atty. Rosslyn Morana, who entered his appearance as counsel on September 2, 1996, filed on October 14, 1996 a Motion for Voluntary Inhibition of respondent judge on account of a pending administrative case against the latter. On October 24, 1996, Atty. Morana submitted an Explanation to the court stating that he could not represent the accused-complainant as the latter failed to give him the records of the case.

On November 14, 1996, the prosecution filed a motion to cite the accused in contempt for filing a series of motions for inhibition and for filing an administrative case against the presiding judge which are plain acts of harassment.

Atty. Salvador Sabio entered his appearance as counsel for the accused-complainant on December 2, 1996 and asked for the cancellation of the scheduled hearings on December 5 and 6, 1996 as he had to study the case. The court granted the request for postponement of Atty. Sabio and reset the case on January 24, 1997 with a strong warning that it will not allow any further dilatory postponement. In the afternoon of January 23, 1997, the court received another motion for postponement filed by Atty. Sabio requesting for the cancellation of the January 24 hearing. The court, considering the same as another delaying tactic, immediately issued an order denying the motion. In spite of the denial of the motion for postponement, Atty. Sabio failed to appear.

On February 4, 1997, accused-complainant again asked for the voluntary inhibition of the presiding judge which the court again denied for being merely a dilatory scheme.

On March 24, 1997, when the case was called for hearing, Atty. Sabio informed the court that he received a written note from the accused-complainant discharging him as counsel, to which the court respondend by ruling that Atty. Sabio would only be allowed to withdraw as accused-complainant's lawyer upon the entry of appearance of a new defense counsel.

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In a Resolution of the Court of Appeals promulgated on April 29, 1997, Judge Chiongson was required to submit a COMMENT[8] on a Petition for *Certiorari* and *Mandamus* filed by accused-complainant. Said document has also been submitted to the Court as Supplemental Comment to this administrative case.[9]

Respondent judge reiterated his belief that his appointment of a counsel *de oficio* to represent the accused-complainant is justified because of the vexatious and oppressive delay on the latter's part who has been represented by a counsel *de parte* who refuses or fails to appear during hearings. He averred that the records of the case will show that the accused-complainant and his lawyers have employed every means fair, but mostly foul, to delay the resolution of Criminal Case No. 94-15772. He added that the Petition for *Certiorari* and the Administrative Case were filed for the purpose of not only delaying the resolution of the case but also to pressure him into inhibiting himself.

As to the allegation of oppression in connection with a criminal case for slander where accused-complainant was the alleged offended party while respondent judge was then the Municipal Trial Judge of MTC, Branch 3, Bacolod City to which the case was being tried, Judge Chiongson belies the same. He explains that the prosecution in the said case had rested while the defense filed a demurrer which was granted.

He narrates that the case for slander was filed by herein accused-complainant against Mrs. Esparcia, a school teacher and sister of a victim alleged to have been killed by the accused-complainant, when said Mrs. Esparcia told the accused-complainant "*Murder, why are you not in jail*" or words to that effect. This was made when accused-complainant was seen roaming around the vicinity of the police station when he was supposed to be a detention prisoner. Accordingly, respondent judge granted the Demurrer on the finding of the court that the

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[8] *Rollo*, pp. 48-56.

[9] *Rollo*, p. 47.

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utterance of Mrs. Esparcia was not slanderous but was merely an expression of exasperation and disgust.

On the charge of Gross Ignorance of the Law, for having tried Criminal Case No. 55099 for violation of B.P. 22 against accused-complainant in the absence of counsel, respondent judge asserts that accused-complainant has nothing to do with said criminal case as can be gleaned from the Order relied upon as basis for the aforementioned charge.

Respondent judge concludes that the sequence of events hereinabove discussed, exposes clearly the false and dissembled charges filed against him as well as the determined efforts of the accused-complainant and his counsel to frustrate the ends of justice.

We find this administrative complaint devoid of merit.

Verily, the facts and circumstances of this case point to the pervasive and prevaricated procrastination of the proceedings undertaken by the accused-complainant and his counsel. Contrary to what accused-complainant would want to impress upon this Court, it seems that he has been the oppressor while respondent judge Roberto Chiongson appears to be the oppressed. Through the course of the proceedings in the subject criminal case, accused-complainant had filed several Motions for Inhibition, a Petition for *Certiorari* and *Mandamus* and this administrative complaint with the view of delaying the eventual disposition of the case.

A Memorandum of the Office of the Court Administrator (OCA) dated January 14, 1998[10] noted that "Criminal Case No. 94-15772 has been pending for almost four (4) years already and the prosecution has yet to rest its case. Complainant has thrown every legal strategy in the book to delay the trial. x x x"

The claim of accused-complainant that respondent judge's appointment of a counsel *de oficio* constitutes a clear violation of his right to due process and a deprivation of his constitutional

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[10] *Rollo*, pp. 69-74.

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right to be defended by counsel of his own choice cannot be countenanced by this Court.

An examination of related provisions in the Constitution concerning the right to counsel, will show that the "preference in the choice of counsel" pertains more aptly and specifically to a person under investigation[11] rather than one who is the accused in a criminal prosecution.[12]

Even if we were to extend the application of the concept of "preference in the choice of counsel" to an accused in a criminal prosecution, such preferential discretion cannot partake of a discretion so absolute and arbitrary as would make the choice of counsel refer exclusively to the predilection of the accused.

As held by this Court in the case of *People vs. Barasina*:[13]

"Withal, the word "preferably" under Section 12(1), Article 3 of the 1987 Constitution does not convey the message that the choice of a lawyer by a person under investigation is exclusive as to preclude other equally competent and independent attorneys from handling his defense. If the rule were otherwise, then, the tempo of a custodial investigation, will be solely in the hands of the accused who can impede, nay, obstruct the progress of the interrogation by simply selecting a lawyer, who for one reason or another, is not available

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[11] The 1987 Constitution Art.. III, Sec. 12(1) "*Any person under investigation* for the commission of an offense shall have the right to be informed of his right to remain silent and *to have competent and independent counsel preferably of his own choice.* If the person cannot afford the service of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel." (Italics supplied)

[12] *Ibid.* Art. III, Sec. 14(2) "*In all criminal prosecutions*, the accused shall be presumed innocent until the contrary is proved, and *shall enjoy the right to be heard by himself and counsel*, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the prosecution of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable." (Italics supplied)

[13] 229 SCRA 450

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to protect his interest. This absurd scenario could not have been contemplated by the framers of the charter."

Applying this principle enunciated by the Court, we may likewise say that the accused's discretion in a criminal prosecution with respect to his choice of counsel is not so much as to grant him a plenary prerogative which would preclude other equally competent and independent counsels from representing him. Otherwise, the pace of a criminal prosecution will be entirely dictated by the accused to the detriment of the eventual resolution of the case.

Accused-complainant was not, in any way, deprived of his substantive and constitutional right to due process as he was duly accorded all the opportunities to be heard and to present evidence to substantiate his defense but he forfeited this right, for not appearing in court together with his counsel at the scheduled hearings.[14]

Accused-complainant had more than sufficient time and every available opportunity to present his side which would have led to the expeditious termination of the case. A party cannot feign denial of due process when he had the opportunity to present his side.[15]

Moreover, there is no denial of the right to counsel where a counsel *de oficio* was appointed during the absence of the accused's counsel *de parte* pursuant to the court's desire to finish the case as early as practicable under the continuous trial system.[16]

Thus, it has been held by this Court in the case of *Lacambra v. Ramos*:[17]

"The Court cannot help but note the series of legal maneuvers resorted to and repeated importunings of the accused or his counsel,

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[14] *People v. Mallari*, 212 SCRA 777.

[15] *People v. Acol*, 232 SCRA 406.

[16] *People v. Macagaling*, 237 SCRA 299.

[17] 232 SCRA 435.

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which resulted in the protracted trial of the case, thus making a mockery of the judicial process, not to mention the injustice caused by the delay to the victim's family."

Undoubtedly, it was accused-complainant's own strategic machinations which brought upon the need for the appointment of a counsel *de oficio* in as much as the criminal case had been dragging on its lethargic course.

As to the charges of oppression and gross ignorance of the law against respondent judge relative to cases under him while he was still in the Municipal Trial Court, the same have been sufficiently answered in the Comments submitted in this case. The explanation by the respondent judge indicate that the aforesaid allegations have neither legal nor factual basis and that the conclusions made therein are merely conjectural.

The actuation of respondent judge in this murder case does not warrant reproach and reprimand, but in fact, merits the acknowledgment and approval of this Court. Such manifestation of zeal clearly show respondent judge's ardent determination to expedite the case and render justice.

The Code of Judicial Conduct mandates that a judge should administer justice impartially and without delay.[18] A judge should always be imbued with a high sense of duty and responsibility in the discharge of his obligation to promptly administer justice.[19]

WHEREFORE, in view of the foregoing, the Court *RESOLVED* to:

1. *DISMISS* the administrative complaint against Judge Roberto S. Chiongson of RTC, Branch 50, Bacolod City for lack of merit.

2. *IMPOSE a FINE of FIVE THOUSAND PESOS (₱5,000.00)* and *ADMONISH* accused-complainant Baltazar D. Amion for filing a malicious and unmeritorious complaint

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[18] *Bentulan vs. Dumatol* 233 SCRA 166

[19] *Cantela vs. Almoradie*, 229 SCRA 712.

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against Judge Roberto S. Chiongson to delay and prolong the prosecution of the case.

3. *DIRECT* Judge Roberto S. Chiongson to continue hearing the case and finally dispose of the same with utmost dispatch.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Melo, Kapunan, and *Pardo, JJ.,* concur.

SECOND DIVISION

[G.R. No. 123184. January 22, 1999]

SERAFIN QUEBEC SR., *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION, PAMFILO POMBO SR., and ANTONIO QUEBEC,** *respondents.*

SYNOPSIS

In September 1981, *Canhagimet Express,* the transportation company owned by petitioner Serafin Quebec, Sr., hired private respondent Antonio Quebec as inspector and liaison officer with the powers and duties of a supervisor/manager. On November 5, 1981, it also hired private respondent Pamfilo Pombo, Sr. as driver-mechanic and co-manager of Antonio Quebec in Catbalogan, Northern Samar, for the Bicol Region and Metro Manila. However, in October, 1999 it dismissed Pombo from the service for his failure to help in the repair of Bus No. 152 and in 1991 Quebec was dismissed from the service by Paciencia Quebec, wife of petitioner, on suspicion of covering up the latter's womanizing. The dismissal of both of them was without notice and hearing. Consequently, they separately filed illegal dismissal cases which were later consolidated under one labor arbiter. The Labor Arbiter dismissed the complaints. On appeal, the NLRC initially dismissed the case for lack of merit. However, it reversed its earlier findings by granting the motion