Supreme Court E-Library

Clearly, plaintiff-appellee chose the second remedy of Article 1484 in seeking enforcement of its contract with defendants-appellants. This is shown from the fact that its Exhibit "F" which showed the computation of the outstanding account of defendants-appellants as of October 3, 1977 took into account "the value of the units repossessed."[14] Having done so, it is barred from exacting payment from defendants-appellants of the balance of the price of the three air-conditioning units which it had already repossessed. It cannot have its cake and eat it too.[15]

WHEREFORE, the judgment of the trial court in Civil Case No. 25578 is hereby SET ASIDE and the complaint filed by plaintiff-appellee Delta Motor Sales Corporation is hereby DISMISSED. No costs.

SO ORDERED.

Narvasa, C. J. (Chairperson), Padilla, Regalado, and *Melo, JJ.,* concur.

SECOND DIVISION

[G.R. Nos. 62554-55. September 2, 1992]

REPUBLIC BANK, *petitioner, vs.* **COURT OF TAX APPEALS and THE COMMISSIONER OF INTERNAL REVENUE,** *respondents*.

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[14] Decision, Civil Case No. 25578, p. 4; *Rollo*, p. 7.

[15] *Nonato vs. Intermediate Appellate Court,* 140 SCRA 255.

Supreme Court E-Library

SYLLABUS

1. TAXATION; DOUBLE TAXATION, DEFINED; NOT PRESENT WHEN ONE IS A PENALTY AND THE OTHER IS A TAX; CASE AT BAR. — The wisdom of this is not the province of the Court. It is clear from the statutes then in force that there was no double taxation involved — one was a penalty and the other was a tax. At any rate, We have upheld the validity of double taxation. (Double taxation: when the same person is taxed by the same jurisdiction for the same purpose. [*San Miguel Brewery, Inc. vs. City of Cebu*, 43 SCRA 275, 280]) The payment of 1/10 of 1% for incurring reserve deficiencies (*Section 106, Central Bank Act*) is a penalty as the primary purpose involved is regulation, while the payment of 1% for the same violation (*Second Paragraph, Section 249, NIRC*) is a tax for the generation of revenue which is the primary purpose in this instance. Petitioner should not complain that it is being asked to pay twice for incurring reserve deficiencies. It can always avoid this predicament by not having reserve deficiencies. Petitioner's case is covered by two special laws — one a banking law and the other, a tax law. These two laws should receive such construction as to make them harmonize with each other and with the other body of pre-existing laws.

2. ID.; RESERVE DEFICIENCY TAX; QUESTION ON THE COMPUTATION MUST BE RAISED AT THE EARLIEST STAGE. — Corollary issue raised by petitioner bank, is the question on how the respondent Commissioner computed reserve deficiency taxes considering that *Sec. 249, NIRC*, speaks of computation of what it calls penalty on a per month basis while the Central Bank Act provides for the computation of the penalty on a per day basis. It claims that respondent Commissioner never informed them of the details of these assessments, considering the same involve complex and tedious computations. It is too late in the day for petitioner to raise this matter for Us to resolve. The grounds alleged by the petitioner in its motion for reconsideration of the Commissioner's assessments are the very same grounds raised in these petitions. Petitioner did not ask the Commissioner to explain how it arrived in computing these reserve deficiency taxes. Neither did petitioner raise this question before the Court of Tax Appeals.

Supreme Court E-Library

3. ID.; ID.; LETTER OF INSTRUCTION NO. 1330; CONDONATION OF PENALTIES AND OTHER SANCTIONS; COVERAGE; NOT APPLICABLE IN CASE AT BAR. — Petitioner bank in its brief mentions that in Letter of Instruction No. 1330 issued by President Marcos on June 6, 1983, the Central Bank was ordered to assist petitioner by way of full condonation of all penalties and other sanctions of whatever kind, nature and description, as of the date they become due, on its legal reserve deficiencies. Consequently, petitioner insists that it is now exempted from what it claims are the penalties imposed by the second paragraph of *Section 249, NIRC*. A careful study of said LOI reveals that it was issued with respect to petitioner bank's (thereafter renamed Republic Planters Bank) role in the government's sugar production and procurement program as the financial arm of the sugar industry when the Philippine Sugar Commission (PHILSUCOM), created by virtue of *P.D. 388* (*1974*), bought the petitioner bank from the Roman family. The petition at bar involves the assessments for the years 1969 and 1970. This LOI definitely does not cover the years 1969 and 1970 as it was issued only on June 6, 1983 and covers the period when PHILSUCOM bought the then ailing Republic Bank from the Roman family and renamed it the Philippine Planters Bank to be used as its financial conduit for the sugar industry. Therefore, even on the thesis that the payment made (*Second paragraph, Section 249, NIRC*) is a penalty, this "penalty" for 1969 and 1970 can not be condoned as said LOI does not cover it.

APPEARANCES OF COUNSEL

Asisteo S. San Agustin for petitioner.

D E C I S I O N

NOCON, *J.*:

Petitioner Republic Bank appeals the decision of public respondent Court of Tax Appeals dated September 30, 1982 dismissing its Petition for Review, thereby affirming public respondent Commissioner of Internal Revenue's assessment for

Supreme Court E-Library

petitioner's reserve deficiency taxes inclusive of 25% surcharge for the taxable years 1969 and 1970 in the amounts of ₱1,325,768.82 and ₱1,953,132.67, respectively.

The antecedent facts as briefly summarized by the Solicitor General are as follows:

"On 14 September 1971, respondent Commissioner assessed petitioner the amount of ₱1,060,615.06, plus 25% surcharge in the amount of ₱265,153.76, or a total of ₱1,325,768.82, as 1% monthly bank reserve deficiency tax for taxable year 1969.

"In a letter dated 6 October 1971, petitioner requested reconsideration of the assessment which respondent Commissioner denied in a letter dated 26 February 1973.

"On 5 April 1973, respondent Commissioner assessed petitioner the amount of P1,562,506.14, plus 25% surcharge in the amount of ₱390,626.53, or a total of ₱1,953,132.67, as 1% monthly bank reserve deficiency tax for taxable year 1970.

"In a letter dated 16 May 1973, petitioner requested reconsideration of the assessment which respondent Commissioner denied in a letter dated 6 May 1974.

"Petitioner contends that Section 249 of the Tax Code is no longer enforceable, because Section 126 of Act 1459, which was allegedly the basis for the imposition of the 1% reserve deficiency tax, was repealed by Section 90 of Republic Act 337, the General Banking Act, and by Sections 100 and 101 of Republic Act 265.

"On 28 March 1973, petitioner filed a petition for review with the Tax Court, docketed as C.T.A. Case No. 2506, contesting the assessment for the taxable year 1969. On 3 July 1974, a similar petition, docketed as C.T.A. Case No. 2618. was filed contesting the assessment for the taxable year 1970.

"The cases, involving similar issues, were consolidated. After hearing, the Tax Court rendered a decision dated 30 September 1982 dismissing the petitions for review and upholding the validity of the assessments.

"Still not satisfied, petitioner filed this petition for review."[1]

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[1] *Rollo*, pp. 132-133.

Supreme Court E-Library

Petitioner urges that the issue to be resolved in this petition is:

"WHETHER SECTION 249 OF THE TAX CODE WHICH PROVIDES THAT 'THERE SHALL BE COLLECTED UPON THE AMOUNT OF RESERVE DEFICIENCIES INCURRED BY THE BANK . . . AS PROVIDED IN SECTION ONE HUNDRED TWENTY-SIX OF ACT NUMBERED ONE THOUSAND FOUR HUNDRED AND FIFTY-NINE (THE CORPORATION LAW) . . . ONE PER CENTUM PER MONTH' HAS BEEN RENDERED INOPERATIVE BY THE REPEAL OF THE AFORESAID REFERRED PROVISION, I.E., SECTION ONE HUNDRED TWENTY-SIX OF THE CORPORATION LAW."[2]

The second paragraph of *Section 249 of the Tax Code of 1970 (C.A. No. 466 as amended by Rep. Act No. 6110)* invoked by the respondent Commissioner in making the assessments provides that:

"There shall be collected upon the amount of reserve deficiencies incurred by the bank, and for the period of their duration, as provided in section one hundred twenty-six of Act Numbered one thousand four hundred and fifty-nine, as amended by Act Numbered three thousand six hundred and ten, one per centum per month."

which paragraph was based on *Sec. 26 of R.A. 337, the General Banking Act*, and Sections 100, 101, and 106 of R.A. 265, the Central Bank Act, all providing for the reserve requirements on banking operations, while *Section 126 of Act No. 1459* (*The Corporation Law*), as amended by Art. 3610, reads:

"SEC. 126. Whenever the reserve as defined in the last preceding section of any commercial banking corporation shall be below the amount required in that section such commercial banking corporation shall not diminish the amount of such reserve by making any new loans or discounts, or declare any dividend out of its profits until the required proportion between the aggregate amount of its deposits and its reserve has been restored. Reserve deficiencies shall be penalized at the rate of one per centum per month upon the amount of the deficiencies and for the periods of their duration in

[2] *Rollo*, pp. 113(d) to 113(e).

Supreme Court E-Library

accordance with the regulation to be issued by the Bank Commissioner. The penalty assessed shall be collected by the Collector of Internal Revenue in accordance with the rules, regulations and procedure to be determined by him. In the case of any commercial banking corporation whose reserve is continuously deficient for a period of thirty days, the business of such corporation may be wound up by the Bank Commissioner in accordance with section sixteen hundred and thirty-nine of Act numbered twenty-seven hundred and eleven, as amended, known as the Administrative Code"[3]

According to petitioner, Section 126 has been expressly repealed by Section 90 of the *General Banking Act (R.A. No. 337)*, to wit:

"Sec. 90. Sections one hundred seventy-five to one hundred eighty-three and one hundred ninety-nine to two hundred seventeen of the Code of Commerce, as amended, section one hundred three to one hundred forty-six and one hundred seventy-one to one hundred ninety of Act Numbered fourteen hundred and fifty-nine, as amended; Acts Numbered Thirty-one hundred and fifty-four and Thirty-five hundred and twenty, and all laws or parts thereof, including those parts of special charters of the Philippine National Bank and other banking institutions in the Philippines which are inconsistent herewith, are hereby repealed.

Both petitioner and public respondent agree that:

"... The requirement on the maintenance of bank reserves, previously found in Section 126 of Act 1459 (The Corporation Law), remained prescribed, after its repeal, in —

a. *Sec. 26, RA 337*[4] — subjecting the deposit liabilities of commercial banks including the Philippine National Bank to the reserve requirements and other conditions prescribed by the Monetary Board in accordance with the authority granted to it under the Central Bank Act.

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[3] *Rollo*, p. 113-b.

[4] Sec. 26. The deposit liabilities of commercial banks including the Philippine National Bank, shall be subject to the reserve requirements and other conditions prescribed by the Monetary Board in accordance with the authority granted to it under the provisions of the Central Bank Act.

Supreme Court E-Library

b. *Sec. 100, RA 265*[5] — requiring banks to maintain reserves against their deposit liabilities;

c. *Sec. 101, RA 265*[6] — authorizing the Monetary Board to prescribe and to modify the minimum reserved ratios applicable to each class of peso deposits;

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[5] Sec. 100. Reserve Requirements. — In order to control the volume of money created by the credit operations of the banking system, banks operating in the Philippines shall be required to maintain reserves against their deposit liabilities. The required reserves of each bank shall be proportional to the volume of its deposit liabilities and shall ordinarily take the form of a deposit in the Central Bank of the Philippines; nevertheless, the Monetary Board may, whenever circumstances warrant, permit the maintenance of part of the required reserve in the form of assets other than peso deposits with the Central Bank. Reserve requirements shall be applied to all banks uniformly and without discrimination.

[6] Sec. 101. Required reserves against peso deposits. — The Monetary Board is authorized to prescribe and modify the minimum reserve ratios applicable to each class of peso deposits; Provided, however, That such ratios shall not be less than five per cent (5%) or more than twenty-five per cent (25%) for time and savings deposits, and shall not be less than ten per cent (10%) or more than fifty per cent (50%) for demand deposits.

Notwithstanding the provisions of the preceding paragraph of this section, the Monetary Board may, in periods of inflation, prescribe higher reserve ratios, but not exceeding 100 per cent, for any further increase in the deposits of each bank above the amounts outstanding on the date on which the bank is notified of the requirement.

Whenever the reserve requirements established by the Monetary Board place any bank under obligation to maintain minimum reserves in excess of twenty-five per cent (25%) of its total time or savings deposits, or in excess of fifty per cent (50%) of its total demand deposits, the Central Bank may pay interest on said excess at a rate which shall not be higher than the Bank's lower rediscount rate.

Supreme Court E-Library

d. *Sec. 106, RA 265*[7] — imposing a penalty of 1/10 of 1% for violation of the Banking Law."[8]

As petitioner Republic sees it, *Section 249 of the Tax Code (CA 466),* can no longer be enforced as the basis for which the tax is to be computed under *Section 126, Act. 1459*, is no longer in force. *The Central Bank Act (R.A. 265),* specifically Sections 100, 101, 105 and 106, by providing for a whole new set of rules in regard to reserve requirements and reserve deficiencies of banks clearly show that it was the legislative intent to remove the regulation of the operations of banks under the ambit of the *Corporation Law (Art. 1459)* and to place them under the purview of Central Bank Act (R.A. No. 265) and the *General Banking Act (R.A. 337)*.

Public respondents disagree and state that *Section 249 of the then Tax Code (CA 466)* is deemed to have *ipso facto* incorporated by reference the new legislations on bank reserves after the repeal of Section 126, Act 1459.

Petitioner Republic argues then that in case of a reserve deficiency, the violating bank would be liable at the same time for a tax of 1% a month (*Second paragraph, Section 249, NIRC*) payable to the Bureau of Internal Revenue as well as a penalty of 1/10 of 1% a day (*Section 106, Central Bank Act*) payable to the Central Bank. They argue that:

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[7] Sec. 106. Reserve deficiencies. — Whenever the reserve position of any bank, computed in the manner specified in the preceding section of this Act, is below the required minimum, the bank shall pay the Central Bank one-tenth of one per cent (1/10 of 1%) per day on the amount of the deficiency; Provided, however, that banks shall ordinarily be permitted to off set any reserve deficiency occurring on one or more days of the week with any excess reserves which they may hold on other days of the same week and shall be required to pay the penalty only on the average daily deficiency during the week. In cases of abuse, the Monetary Board may deny any bank the privilege of offsetting reserve deficiencies in the aforesaid manner.

If a bank chronically has a reserve deficiency, the Monetary Board may limit or prohibit the making of new loans or investments by the bank and may require that part of all the net profits of the bank be assigned to surplus.

[8] *Rollo*, pp. 103-104.

Supreme Court E-Library

"As we examine the second paragraph of Section 249 of the Tax Code, we find nothing therein which says that such imposition is a tax rather than a penalty. It merely states that 'there shall be collected . . . as provided in Section one hundred twenty six of Act Numbered one thousand four hundred and fifty-nine . . . one per centum per month.' On the contrary, the provision referred to (Section 126 of Act 1459) states that '. . . reserve deficiencies shall be penalized at the rate of one per centum per month . . . the penalty assessed shall be collected by the Collector of Internal Revenue.' It would be wrong, therefore, to say that the imposition in Section 249 of the Tax Code is a tax, not a penalty, because taken in the context of the referred statute, it is really a penalty. Such imposition was provided in the Tax Code and payable to the Collector of Internal Revenue simply because at that time there was yet no Central Bank Act and General Banking Act nor a Monetary Board of Central Bank to regulate the operation of banks."[9]

After a careful consideration of the facts of the case and the pertinent laws involved, We vote to deny the petition.

Firstly, we would like to state that We find unfortunate petitioner's act of quoting out of context the questioned provision in the Tax Code. Petitioner alleged that the second paragraph of *Section 249 of the Tax Code* "merely states" that there "shall be collected . . . as provided in Section one hundred twenty one of Act numbered one thousand four hundred and fifty nine . . . one per centum per month."

If petitioner had been candid and honest enough, it would have stated under what title and chapter of the Tax Code the second paragraph of Section 249 falls. As it then stood, the law stated:

xxx xxx xxx

TITLE VIII — MISCELLANEOUS TAXES

"*Sec. 249.* Tax on Banks . . .

"There shall be collected upon the amount of reserve deficiencies incurred by the bank, and for the period of their duration, as provided

[9] *Rollo,* p. 113 (i).

Supreme Court E-Library

in section one hundred twenty-six of Act numbered one thousand four hundred and fifty-nine, as amended by Act Numbered Three thousand six hundred and ten, one per centum per month, . . . (As amended by Rep. Act No. 6110)"[10]

Clearly, the law states a tax is to be collected.

As the law stood during the years the petitioner was assessed for taxes on reserve deficiencies (1969 & 1970), petitioner had to pay twice — the first, a penalty, to the Central Bank by virtue of Section 106 for violation of Secs. 100 and 101. all of the *Central Bank Act* and the second, a tax, to the Bureau of Internal Revenue for incurring a reserve deficiency.

As correctly analyzed by the petitioner and public respondents, the new legislations on bank reserves merely provided the basis for computation of the reserve deficiency of petitioner bank.

Petitioner submits that it was not the legislative intention that banks with reserve deficiencies would pay twice as the *Tax Code* (*CA 466*, as amended by *P.D. 69*) enacted on January 1, 1973 did not contain said questioned provision.

While petitioner might have a point, the wisdom of this legislation is not the province of the Court.[11] It is clear from the statutes then in force that there was no double taxation involved — one was a penalty and the other was a tax. At any rate, We have upheld the validity of double taxation.[12] The payment of 1/10 of 1% for incurring reserve deficiencies (*Section 106, Central Bank Act*) is a penalty as the primary purpose involved is regulation,[13] while the payment of 1% for the same violation (*Second Paragraph, Section 249, NIRC*) is a tax for the generation of revenue which is the primary purpose in this

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[10] 1970 National Internal Revenue Code, p. 193.

[11] *Republic vs. Bacus*, 176 SCRA 376, 384.

[12] Double taxation: when the same person is taxed by the same jurisdiction for the same purpose. (*San Miguel Brewery, Inc. vs. City of Cebu*, 43 SCRA 275, 280).

[13] *Progressive Development Corporation vs. Quezon City*, 172 SCRA 629, 635.

Supreme Court E-Library

instance.[14] Petitioner should not complain that it is being asked to pay twice for incurring reserve deficiencies. It can always avoid this predicament by not having reserve deficiencies. Petitioner's case is covered by two special laws — one a banking law and the other, a tax law. These two laws should receive such construction as to make them harmonize with each other and with the other body of pre-existing laws.[15]

Dura lex sed lex!

II

Corollary to this issue raised by petitioner bank, is the question on how the respondent Commissioner computed reserve deficiency taxes considering that *Sec. 249, NIRC*, speaks of computation of what it calls penalty on a per month basis while the Central Bank Act provides for the computation of the penalty on a per day basis. It claims that respondent Commissioner never informed them of the details of these assessments, considering the same involve complex and tedious computations.

It is too late in the day for petitioner to raise this matter for Us to resolve.[16] The grounds alleged by the petitioner in its motion for reconsideration of the Commissioner's assessments are the very same grounds raised in these petitions. Petitioner did not ask the Commissioner to explain how it arrived in computing these reserve deficiency taxes. Neither did petitioner raise this question before the Court of Tax Appeals.

Be that as it may, respondent Commissioner explained in compliance with Our Resolution of December 17, 1984, that:

"3. The reserve deficiency tax amounting to ₱1,325,768.82 and ₱1,953,132.67, including surcharge, was computed on the basis of the monthly averages of reserve deficiencies using figures on daily reserve deficiencies as appearing in DSE Form No. 1 duly

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[14] *Ibid.*

[15] *Commissioner of Customs vs. Esso Standard Eastern, Inc.*, 66 SCRA 113, 120.

[16] *Matienza vs. Servidad*, 107 SCRA 276, 283.

Supreme Court E-Library

accomplished by the bank, required to be filed regularly with the Department of Supervision and Examination of the Central Bank . . ."[17]

Thus, what the respondent commissioner did was just to add up all the daily reserve deficiencies — as stated by petitioner itself in DSE Form No. 1 which it submitted to the Central Bank — for one month, divide such total by the number of banking days in a month to get the average monthly reserve deficiency. For example, for January, 1970, the total daily average of reserve deficiencies being ₱175,228.031.73, the monthly average was obtained by dividing said figure by 21 banking days to get ₱8,344,196.75. The tax rate applied was 1% to get the reserve deficiency tax of ₱83,441.97.[18] Obviously, the respondent commissioner could not apply the tax rate of 1% on the daily reserve deficiency as the law (*Second paragraph, Sec. 249, NIRC*) calls only for a monthly computation. Mathematically, this is the right procedure in obtaining the monthly average of the daily reserve deficiencies.

As can be, seen, even if petitioner had validly raised said issue, the respondent Commissioner merely followed the law to the letter.

III

Lastly, petitioner bank in its brief mentions that in Letter of Instruction No. 1330 issued by President Marcos on June 6, 1983,[19] the Central Bank was ordered to assist petitioner by way of full condonation of all penalties and other sanctions of whatever kind, nature and description, as of the date they become due, on its legal reserve deficiencies. Consequently, petitioner insists that it is now exempted from what it claims are the penalties imposed by the second paragraph of *Section 249, NIRC*.

A careful study of said LOI reveals that it was issued with respect to petitioner bank's (thereafter renamed Republic Planters

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[17] *Rollo*, p. 165.

[18] *Rollo*, p. 166.

[19] *Rollo*, pp. 123-124.

Supreme Court E-Library

Bank) role in the government's sugar production and procurement program as the financial arm of the sugar industry when the Philippine Sugar Commission (PHILSUCOM), created by virtue of *P.D. 388* (*1974*), bought the petitioner bank from the Roman family.

The LOI itself states that:

xxx xxx xxx

"WHEREAS, IN PURSUIT OF THE GOVERNMENT'S SUGAR PRODUCTION AND PROCUREMENT PROGRAM, REPUBLIC PLANTERS BANK INCURRED OVERDRAFTS IN ITS CLEARING ACCOUNT WITH THE CENTRAL BANK IN VIEW OF THE LATTER'S INABILITY TO EFFECT SUBSTANTIAL REGULAR LOAN RELEASES THRU ITS REDISCOUNTING WINDOW DUE TO CERTAIN CONSTRAINTS ON DOMESTIC CEILINGS RESULTING IN THE DEPOSIT RESERVE DEFICIENCIES AND CORRESPONDING IMPOSITION OF PENALTIES FOR RESERVE DEFICIENCIES;

"WHEREAS, CONSIDERING THE MAGNITUDE OF THE AMOUNT OF THE RESERVE PENALTIES WHICH MAY AFFECT ITS VIABILITY AND IN ORDER TO RATIONALIZE THE SITUATION, IT IS IMPERATIVE THAT REPUBLIC PLANTERS BANK BE GIVEN APPROPRIATE RELIEF FROM ITS PRESENT PREDICAMENT BROUGHT ABOUT PRIMARILY BY THE IMPLEMENTATION OF THE GOVERNMENT'S SUGAR PRODUCTION AND PROCUREMENT PROGRAM AND NOT BY REASON OF ANY MISMANAGEMENT OR UNSOUND BANKING PRACTICE ON THE OPERATION OF THE BANK."[20]

The petition at bar involves the assessments for the years 1969 and 1970. This LOI definitely does not cover the years 1969 and 1970 as it was issued only on June 6, 1983 and covers the period when PHILSUCOM bought the then ailing Republic Bank from the Roman family and renamed it the Philippine Planters Bank to be used as its financial conduit for the sugar industry. Therefore, even on the thesis that the payment made (*Second paragraph, Section 249, NIRC*) is a penalty, this

[20] *Rollo*, p. 123.

Supreme Court E-Library

"penalty" for 1969 and 1970 can not be condoned as said LOI does not cover it.

WHEREFORE, premises considered, the petition is denied with costs against petitioner.

SO ORDERED.

Narvasa, C .J. (Chairperson), Padilla, and *Regalado, JJ.*, concur.

Melo, J., no part.

SECOND DIVISION

[G.R. No. 70120. September 2, 1992]

CIVIL AERONAUTICS ADMINISTRATION AND/OR ADMINISTRATOR AND JOSE ESPINA, *petitioners, vs.* **INTERMEDIATE APPELLATE COURT, VALENTIN ABAD (substituted by his heirs, namely JOY, JOHN, JULIET, JIMMY and JOVENCITO, all surnamed ABAD),** *respondents.*

SYLLABUS

1. POLITICAL LAW;ADMINISTRATIVE LAW; CIVIL SERVICE; ARBITRARY DISMISSAL; PROTECTION AGAINST ARBITRARY DISMISSAL IS ACCORDED A NON-ELIGIBLE EMPLOYEE OR ONE WHO HOLDS A TEMPORARY APPOINTMENT.— Thus, the mantle of protection against arbitrary dismissals is accorded to an employee even if he is a non-eligible and holds a temporary appointment.

2. ID.; ID.; ID.; DISMISSAL OF ABAD WAS MALICIOUS AND ARBITRARY.— The dismissal of Abad was undoubtedly