

IN THE HIGH COURT

(BISHO)

CASE NO.: 92/2000

In the matter between:

<u>CASSIM FREDERICKS AND OTHERS</u>	<u>APPLICANTS</u>	5
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and

THE MEC EDUCATION AND TRAINING FOR

<u>THE PROVINCE OF THE EASTERN CAPE</u>	<u>FIRST RESPONDENT</u>
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PERMANENT SECRETARY-EDUCATION:

<u>CULTURE AND SPORT-EASTERN CAPE</u>	<u>SECOND RESPONDENT</u>	10
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MINISTER OF EDUCATION OF THE

<u>REPUBLIC OF SOUTH AFRICA</u>	<u>THIRD RESPONDENT</u>
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JUDGMENT:

<u>WHITE J:</u> This is an application for leave to appeal to the Constitutional Court against the judgment of this Court dated 3 may 2001. The judgment was in respect of an application by 56 educators to set aside the refusal of the Department of Education of the Eastern Cape Province to consider and grant them voluntarily severance packages. The Court dismissed the application as it found that the application concerned a labour matter which fell within the jurisdiction of the Labour Court. In terms of the provisions of the Labour Relations Act, 66 of 1995 and that the High Court issue does not have jurisdiction to hear the matter.	15
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The crux of the question decided by the Court is set out in the following extracts from the judgment:	25
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"Section 157(2) of the LRA referred to earlier in this

judgment affords the Labour Court concurrent jurisdiction with the High Court in respect of any violation by the State as employer of any fundamental right entrenched in Chapter 3 of the interim constitution (now Chapter 2 of the final Constitution, Act 106 of 1996). The question that this Court must decide is whether an issue which is manifestly a labour dispute that falls squarely within the provisions of the LRA and the jurisdiction of the Labour Court should be tried by a High Court simply on the grounds that the dispute also embraces certain violations of the employees constitutional rights."

"I am of the view that for purposes of section 157(2) of the Act the substance of the dispute between the parties should in every case be determined. What is in essence a labour dispute as envisaged by the Act should not belabour a constitutional dispute simply by reason of the fact that the facts thereof and the issues raised could also support a conclusion that the conduct of the employer complained of amounts to a violation of entrenched rights in the Constitution and should be declared as such. In every case it should rather be determined if the facts of the case giving rise to the dispute and the issues between the parties are to be characterised a 'matter' provided for in the Act and if that 'matter' is in terms of section 157 to be determined by the Labour Court the High Court is precluded from exercising jurisdiction."

As there are conflicting decisions on this issue the cases are set out in the judgment this Court is of opinion that leave to appeal directly to the Constitutional Court should be granted so that the issue can reach finality and a definitive judgment can be given thereon. We agree with the suggested certificate set out in the Answering affidavits for this application wherein it is stated that the Constitutional issues in the 'matter' are the following:

"6.1 Whether section 157(2) of the Labour Relations Act, 66 of 1995 deprive the High Court of jurisdiction in respect of constitutional issues where the dispute before the Court is manifestly and in essence and substance a labour dispute; and

6.2 Whether the dispute in question namely, the failure to process applications for voluntarily severance packages was correctly to be regarded as manifestly and in essence and substance a labour dispute and not primarily an adjudication of an alleged infringement of the appellants' constitutional rights to free administrative justice and/or equality."

The Court therefore certifies as follows:

- (a) The decision given in this case concerns constitutional matters.
- (b) It is in the interests of justice for the matter to be brought directly to the Constitutional Court.
- (c) There is reason to believe that the Constitutional Court may give leave to the appellants to note an appeal against the decision.
- (d) The requirements of subparagraph (i), (ii) and (iii) of Constitutional

Court rule 18(6)(a) have been satisfied.

The costs of this application will be costs in the application for leave to appeal directly to the Constitutional Court.

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CS WHITE	:	JUDGE
BISHO	:	HIGH COURT

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EBRAHIM J:

I concur.

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Y EBRAHIM	:	JUDGE
BISHO	:	HIGH COURT

(18 JUNE 2001)