

Sneller Verbatim/IDM

CASE NO.J5366/00

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

2000-11-13

In the matter between:

NOMAKHALIPHA MARGARET NONGOGO (10) Applicant

and

THE MEC OF EDUCATION, FREE STATE

PROVINCE

First Respondent

THE DIRECTOR GENERAL FREE STATE

PROVINCE

Second Respondent

THE HEAD OF THE DEPARTMENT OF

EDUCATION FREE STATE PROVINCE

Third Respondent

J U D G M E N T

(20)

REVELAS J:

1.The applicant has on an urgent basis approached this court seeking relief to the effect that she be reinstated, pending the resolution of a "dispute under chapter 8 of the Labour Relations Act of 1995 (sic) read with the relevant provisions of the Employment of Educators Act of 1998 (the Act)".

2.The applicant's services were terminated on 3 October 2000. This apparently came to the attention of the applicant's attorneys on 26 October 2000. The reason for her dismissal appears to be that she was discharged form

her services on account of misconduct, being that she was absent from work for a period exceeding 14 consecutive

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days without the consent of her employer.

3.It was argued on behalf of the applicant that since section 25 of the Educators Act provides that certain terms and conditions remain intact pending an appeal, which had been lodged at this stage, the applicant has not been paid her salary, she is entitled to reinstatement and the payment of her salary. ~~((10))~~

4.To succeed with the application the applicant has to show firstly that she has a clear right to reinstatement and repayment, which on the facts, she has not proved.

5.Secondly, it must be shown that there is no alternative remedy than to approach this court on an urgent basis.

The Labour Court does provide for remedies for disputes of this nature. A right to appeal does not mean that all actions are to be suspended immediately. That is not what the section says. Employees have a right to appeal, but the effect of the appeal is not to reinstate the employee, and on the basis that an appeal has been lodged, ~~((20))~~ I see no need to reinstate the applicant.

6.The applicant should pursue the relief she seeks in respect of her salary in the normal course.

7.For all the aforesaid reasons I do not regard the matter as urgent.

8.Consequently the application is dismissed.

9.There is no reason why it should not be dismissed with costs, since the applicant has brought to court a case with no merit and has caused the respondent to incur the costs of opposing it.

ORDER

The Application is dismissed with costs.

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t: Mr M. Khang

nt: Mr Makka