Sneller Verbatim/MB

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN CASE NO: J4655/01

2001-11-12

In the matter between

EDUCATION AND LABOUR INSTITUTE OF

SOUTH AFRICA & 33 OTHERS Applicant

and

POTCHEFFSTROOM MAGISTRATE COURT

(SENIOR PROSECUTOR/ATTORNEY GENERAL) 1st Respondent

SOUTH AFRICA POLICE SERVICES

2nd Respondent

3rd Respondent

J U D G M E N T

REVELAS J:

1. This is the return day of the *rule nisi* in respect of an order given by Pillay AJ, on 24 October wherein he granted the following relief and I quote:

"1. That the third respondent is called upon to show cause on the 12th of November 2001 (that is today) at 10 a.m. or so soon thereafter, why it should not be;

2. restrain from engaging the second respondent without complying with the terms of the collective agreement existing between the applicant and the third respondent;

3. ordered to pay the applicants their wages as from 14 September 2001 until the resumption of the strike by the applicants which was interrupted by the intervention of the second respondent's members at the insistence of the third respondents on 14 September 2001;

4. ordered to pay the costs of this application."

2. By the return day the third respondent had filed an answering affidavit wherein it is disputed that the strike embarked upon by the first applicant's members,(Athe 2nd to 33rd respondents≅), is protected. The third respondent also denied that it had requested the second respondent to arrest the first respondent's members who embarked on an unprotected strike.

3. On the papers before me, which are the applicant's papers, no case has been made out to illustrate or demonstrate why the strike is protected. In terms of the collective agreement which formed part of the papers, a committee shall be appointed to negotiate and endeavour to reach agreement on amendments to the agreement, wages, working conditions and terms and conditions of employment and other matters of mutual interest.

4. It is also agreed that subject to the provisions of any signed agreement, a party wishing to initiate negotiations shall furnish written proposals and a proposed agenda to the other party not less than 15 workdays before the negotiations would commence and negotiations on wages and other substantive issues shall normally commence in August of each year and the parties shall meet as often as is necessary and conduct the negotiations in good faith. They also undertake to utilize the dispute procedures set out in clause 14 of the agreement unless both parties agreed that deadlock has - and I underline, *not been reached*.

5. Clause 14 sets out an elaborate dispute procedure if the parties may or may not refer dispute to the CCMA. What is quite clear is that the applicant does not demonstrate that they have complied with this dispute

procedure which had been disputed, and it has been disputed that they have by responding on the papers before me and remain in dispute, furthermore even if there was no collective agreement the applicant had not demonstrated that they have complied with the provisions of chapter 8 of the Labour Relations Act 66 of 1995.

6. I am also not certain to which extent the labour court may interfere with the actions of the first and second respondents, and whether it has jurisdiction to do so. I say this particularly with regard to the fact that it has not been demonstrated on the papers before me that the applicant's members, first applicant's members were arrested as a result of a complaint made by the third respondent, which is also denied on the papers before me. Mr Qhele informed me that on the day the interim relief was granted it was brought to the attention of the presiding judge in that matter, who was Pillay AJ, that the third respondent was indeed the complainant in the matter and therefore caused the arrests, however that is not the case before me and I see no documentary proof as to this case. Even if they were the complainants it is not on their instructions that, it is not on the third respondent's instructions that the police had acted. That is in their own discretion and I doubt that the labour court may interfere in such action.

7. Therefore the rule should be discharged. I considered the question of costs. It may be so that the applicants have brought a somewhat frivolous matter to court with no merits, on the other hand there is in the papers before me an ongoing strike and the parties still have an ongoing relationship. When such factors exist it is not appropriate to make a costs order. It would be far more useful if the applicant, the first applicant directed its energies in an endeavour to resolve the co-dispute between the third respondent and the 33 individual applicants.

_____

E. Revelas