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IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT CAPE TOWN

REPORTABLE

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CASE NO: C22/2005

DATE HEARD: 10-06-2005

DATE DELIVERED: 10-06-2005

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In the matter between:

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WESTERN CAPE WORKERS ASSOCIATION

APPLICANT

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and

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MINISTER OF LABOUR

RESPONDENT

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JUDGMENT

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PILLAY D, J

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1. The applicant launches this appeal in terms of section 111 of the Labour Relations Act No. 66 of 1995 ("the LRA"). It is an appeal against the decision of the registrar of labour relations to deregister the applicant as a trade union from the register of trade unions lodged with the Department of Labour.

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2. The applicant was registered as a trade union in 1997. Since then it failed to comply with the numerous requirements imposed on trade unions. Notably, the applicant failed to submit its audited financial statements annually since 1997. The registrar called upon the applicant and all other interested parties to make representations within 60 days as to why its registration should not be cancelled. This invitation to make representations was published in the Government Gazette on 16 July 2004 and despatched by letter to the applicant on 7 July 2004.

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3. On 17 November 2004 the registrar of trade unions informed the applicant that, despite having been given an opportunity to make representations as to why its registration should not be cancelled, he was not persuaded by the representations he had received. The registrar then cancelled the registration of the applicant on 18

November 2004.

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4. It is common cause that the applicant failed to comply with the registrar's requests for information in terms of section 100 of the LRA, its obligations in terms of section 98 of the LRA pertaining to accounting records and audits, and section 99 pertaining to the duty to keep records.

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5. The non-compliance persists for more than seven years. The registrar gave the applicant an opportunity to comply with the requirements and to make representations to prevent the cancellation of its registration.

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6. The applicant purportedly complied with the requirement after it was deregistered. When the decision to deregister the union was taken however, the registrar was well within the bounds of exercising a reasonable discretion by cancelling registration as there had not been compliance with the law for a protracted period of seven years.

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7. His discretion is unassailable in all the circumstances. The applicant is entrusted with public funds and has to account for it publicly and properly in terms of the legislation.

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8. The applicant, as I have indicated above, brought the appeal in terms of 111 of the LRA. However, he variously submits that this appeal should be dealt with in terms of the Promotion of Administrative Justice Act No. 3 of 2000 (PAJA).

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9. In support of this submission he refers to section 33(3) of the Constitution of the Republic of South Africa, Act No 108 of 1996 pertaining to just administrative action. The Constitution provides at section 33(3) as follows

"National legislation must be enacted to give effect to these rights."

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The LRA is national legislation designed for labour disputes, including administrative law type disputes arising in labour law.

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10. PAJA is also national legislation. However, I have said elsewhere that PAJA does not apply to labour disputes. Section 210 of the LRA makes it clear that if there is any conflict relating to matters dealt with in the LRA between the LRA and the provisions of any other law except the Constitution, the provisions of the LRA must

prevail. The procedures, time limits and the requirements of PAJA differ substantially from the LRA. The LRA, for instance, provides a right of an appeal to this Court against a decision of the registrar, which is a far wider and more generous right than the right of review, which is a narrower and more limited right that PAJA offers.

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11. The time limits in PAJA are not the same as those contemplated in the LRA, which are tailor-made for labour disputes. In all the circumstances, PAJA does not apply to this dispute. On the facts and on the law the application must fail. The application is dismissed.

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12. However, as regards costs the applicant has not filed a resolution authorising these proceedings. It is not enough for Mr Zamile August, who represents the applicant, to say in his heads of argument that he is properly authorised; proof of it must be submitted to the Court. He has not done so. It may well be that the applicant is not aware at all of these proceedings. If the applicant did authorise these proceedings Mr August should be able to recover any amounts paid by him from the applicant.

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13. In the circumstances the order that I make is as follows:

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1. The application is dismissed.

2. Mr Zamile August, the union organiser, is directed to pay the costs of the application.

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Pillay D, J

1 August 2005

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FOR THE APPLICANT: Mr Z. August (Union Official)

INSTRUCTED BY: Western Cape Workers Association

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FOR THE RESPONDENT: Mr B. Mantame

INSTRUCTED BY: State Attorney

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