

184/92

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

CASE NO 1/90

In the matter between

THE PUBLIC SERVANTS LEAGUE OF SOUTH AFRICA

Appellant

and

THE MINISTER OF WATER AFFAIRS

Respondent

CORAM: HOEXTER, KUMLEBEN, GOLDSTONE JJA et

NICHOLAS, HOWIE AJJA

DATE HEARD: 20 AUGUST 1992

DATE DELIVERED: 28 SEPTEMBER 1992

J U D G M E N T

GOLDSTONE JA:

The appellant, the Public Servants League of South Africa ("the League"), is a staff association for persons employed in the public sector. It has a membership of more than 40 000 public servants. The principal object of the League, as appears from its constitution, is to advance and protect the rights and interests of its members.

The League sought an order in the Court a quo (Nel J) granting it leave to intervene as an applicant in the application ("the main application") which had been launched by Mr Gregory Mangena and twenty-two others ("the applicants") against the Minister of Water Affairs ("the Minister"). In the main application the applicants

claimed a declaratory order to the effect that their purported dismissals were null and void. All of the applicants were members of the League.

The application for joinder was dismissed with costs, including the costs of two counsel. With leave of the Court a quo, the League now appeals to this Court against that order.

The League sought to be joined as an applicant in the main application so that it might seek an order in its own right to the effect that the dismissal of the applicants was a nullity. The League based its right upon the cumulative effect of the following three factors:

1. Its recognition by government departments as a body representing the collective interests of its members, all public servants;
2. The policy in respect of the retrenchment of public servants as recorded in a

circular issued by the Commission for Administration on 21 July 1987; and

3. An undertaking to it by the Minister for the Commission for Administration at a meeting held on 24 May 1988 to the effect, inter alia, that the State would not take any decisions or steps which would detrimentally affect the interests of the League or its members without first consulting with the League.

In this Court it was submitted that the cumulative effect of those three factors was to create a legitimate expectation by the League that before any government department decided upon a policy of retrenchment affecting its members, the League would first be consulted. The admitted failure so to consult prior to dismissing the applicants, so it was further submitted, entitled the League to an order declaring those dismissals to be null and void.

In the view I take of this matter it is unnecessary to examine the factual basis relied upon by the League to establish the three factors referred to above. It is also unnecessary to consider or decide whether, if they have been proved, they would give rise to a legitimate expectation conferring legal rights upon the League.

In the main application the applicants relied upon two grounds for claiming that their dismissals were a nullity, viz:

1. That the officials who dismissed them were not authorized to do so; or
2. That they were not given a hearing prior to their dismissals.

The applicants did not rely for relief upon the failure by the Minister to have consulted with the League prior to the dismissals. All that is stated in this

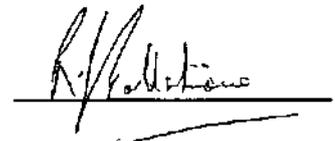
regard in the Founding Affidavit of Mr Mangena is the following:

"23 Ek wil ook byvoeg dat ek en die ander Applikante almal lede van die Staatsdiensliga van Suid-Afrika ('die Liga') is. Die Liga het alreeds aan my en die ander Applikante aangedui dat indien die Respondent bereid sou wees om ons aan te hoor, amptenare van die Liga die Applikante sal bystaan en hulle van hulp sal bedien om hul saak aan die Respondent te stel."

In my judgment, even if the League did have the legitimate expectation contended for, it was not entitled to be joined in the main application in order to pursue its own alleged right of action in the present circumstances. Firstly, the applicants themselves were not relying upon such right. Secondly, the League's interests could in no way have been prejudicially

affected by the outcome of the main application. Thirdly, although relying on its own alleged cause of action the League was not seeking the grant of any relief to itself. It follows that neither at common law nor in terms of the Rules of Court did the League have a right to the joinder claimed by it.

The appeal is dismissed with costs, including the costs of two counsel.



R J GOLDSTONE
JUDGE OF APPEAL

HOEXTER JA)
KUMLEBEN JA)
NICHOLAS AJA) CONCUR
HOWIE AJA)