THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not reportable

Case no: J 2262/17

In the matter between:

MASHABA PIET LESIBA **Applicant**

And

REGIONAL HEAD: DEPT OF JUSTICE

AND CONSTITUTIONAL DEVELOPMENT

(MPUMALANGA PROVCINCE) **First Respondent**

REGIONAL HEAD: DEPT OF JUSTICE

AND CONSTITUTIONAL DEVELOPMENT

(LIMPOPO PROVINCE) **Second Respondent**

Date of application 3 October 2017

Delivered: 4 October 2017

JUDGMENT

VAN NIEKERK J

[1] The applicant is employed by the Department of Justice and Constitutional Development as an interpreter. He is stationed at Grobersdal, Limpopo Province. The applicant seeks an interim order, on an urgent basis, interdicting and restraining the first respondent from continuing with a disciplinary hearing against him. The charges of misconduct brought against the applicant or set out in a notice issued to him dated 20 January 2017. The application is premised on the submission that the charges were brought by the first respondent, the regional head of the Department in Mpumalanga, in circumstances where he (the applicant) with effect from 15 January 2016, fell under the authority of the second respondent, the regional head of the Department in Limpopo province. The applicant contends that in terms of s 14B(4) of the Public Service Act (*sic* – the relevant provision is s 16B(4)), the regional head, Mpumalanga lost its authority to discipline him after the date on which he became subject to the authority of the regional head, Limpopo Province.

[2] The applicant pursued this submission by way of a preliminary point before the chair of his disciplinary hearing. On 4 July 2017, the chair rejected the point. The chair referred to s16B(4), which reads as follows:

> (4) If an employee of the department (in this subsection referred to as 'the new department'), is alleged to have committed misconduct in the Department by whom he or she was employed previously (in paragraph (b) referred to as 'the former Department), the head of the new department –
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> (a) may institute or continue disciplinary steps against that employee; and
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> (b) shall institute or continue such steps if so requested –
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> (i) by the former executive authority if the relevant employee use a head of department; or
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> (ii) by the head of the former Department, in the case of any other employee.

[3] The chair of the enquiry held that s16B (4) does no more than regulate how disciplinary action is to be conducted in circumstances where an employee has been transferred from one department to another. The chair found that the department is a national department, headed by a director-general and that while the department comprises regional offices headed by a regional head at the level of chief director, the regional offices do not constitute provincial departments. On that basis, the chair found that the section was of no application, In any event, the chair and the departmental representative in the present instance had been appointed by the regional office: Limpopo.

[4] In his submissions in support of the requirement of a Brahma right, the applicant submits that he has a right to fair labour practices and that the conduct of the respondents is such that it is in breach of that right. In his oral submissions, the applicant's representative submitted that the case concerned the rule of law, and particularly, a breach of a statute by a Department of State and that in these circumstances, the case was exceptional and that the court ought properly to intervene.

[5] This court has stated on numerous occasions that it will intervene in incomplete internal hearings in only the most exceptional circumstances. In *Magoda v DG Rural Development and Land Reform* (J1876/17, 28 August 2017), Myburgh AJ recently said the following (footnotes included in square brackets):

> Eight years ago, Francis J identified that a worrying trend was developing in this court where the urgent roll is being clogged up with applications to interdict disciplinary enquiries from taking place.[1] [*Mosiane v Tlokwe City Council* [2009] 8 BLLR 772 (LC) at para 15.] In the years that followed, this court repeatedly echoed these sentiments.[2] [See *Jiba v Minister of Justice and Constitutional Development & others* [2009] 10 BLLR 989 (LC) at para 17; *SA Municipal Workers Union on behalf of Members v Kopanong Local Municipality* (2014) 35 *ILJ* 1378 (LC) at para 33; *South African Municipal Workers' Union obo Dlamini and others v Mogale City Local Municipality and another* [2014] 12 BLLR 1236 (LC) at para 45; *Zondo & another v*

Uthukela District Municipality & another (2015) 36 *ILJ* 502 (LC) at para 45; *Ravhura v Zungu NO & others* (2015) 36 *ILJ* 1615 (LC) at para 15; *Association of Mineworkers & Construction Union & others v Northam Platinum Ltd & another* (2016) 37 *ILJ* 2840 (LC) at para 41.] But practitioners have not taken heed of this, with Van Niekerk J having commented last year that "[t]he urgent roll in this court has become increasingly and regrettably populated by applications in which intervention is sought, in one way or another, in workplace disciplinary hearings".[3] [*Ngobeni v Passenger Rail Agency of SA Corporate Real Estate Solutions & others* (2016) 37 *ILJ* 1704 (LC) at para 14.] This case adds to what is a significant challenge to the capacity and resources of this court.

[6] It would appear that despite these admonitions, parties continue to bring urgent applications to secure interventions in incomplete domestic disciplinary hearings. The present application is no more than an urgent appeal against the ruling by the chair of the disciplinary hearing dismissing his preliminary point. I have my doubts as to whether this court has jurisdiction to grant the order sought. Unlike *Magoda*, the applicant in the present instance has not even sought to frame the application as one in respect of which the court is empowered to hear in terms of the enabling provisions of s 157 and s 158 of the LRA. It should be emphasised that the jurisdiction to address substantive and procedural shortcomings in the exercise of workplace discipline lies in the hands of an arbitrator.

[7] There is simply no basis on which the application ought to be entertained. To do so would undermine the statutory purpose underlying dispute resolution under the LRA. Workplace discipline remains regulated by the code of practice and preliminary points or to be dealt with in the ordinary course of the exercise of workplace discipline, as they were in the present instance. If these rulings become the subject of dispute, these are matters that ought to be dealt with if necessary during the course of an arbitration under the auspices of the CCMA

were bargaining council having jurisdiction. This court exercises a supervisory jurisdiction by way of its power to review rulings and awards made by arbitrators. That system is entirely undermined when parties seek this court's intervention, as a forum of first instance, effectively to micro-manage workplace disciplinary hearings.

[8] For the above reasons, the application stands to be dismissed. The applicant must answer to the merits of the charges brought against him. Had the application been opposed,I would have had no hesitation in granting an order for costs on a punitive scale. In order to emphasise the seriousness of the admonitions to which Myburgh AJ referred and what appears to be an indifference to them, perhaps the time has come for practitioners who file applications such as the present to be invited to make submissions as to why an order should not be granted that they forfeit their fees.

I make the following order:

1. The application is dismissed.

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André van Niekerk

Judge

REPRESENTATION

For the applicant: S Rangoanasha