VIC & DUP/JOHANNESBURG/LKS

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

CASE NO. J672/99

In the matter between:

PUBLIC SERVANTS ASSOCIATION OF

SOUTH AFRICA Applicant

and

DIRECTOR-GENERAL, NORTHWEST PROVINCIAL

ADMINISTRATION Respondent

J U D G M E N T

ZONDO J:

[1] The Public Association of South Africa has brought an application on an urgent basis against the Director-General, North-West Province for an interim order the effect of which would be to order the respondent

to pay certain members of the applicant who have been suspended from the employment of the North West Province their normal emoluments during their suspension which was effected by the respondent with effect from about 18 January 1999.

[2] The applicant contends that the suspension constitutes an unfair labour practice insofar as it is without emoluments. It says there is no basis for their suspension to be without emoluments because the respondent's case is that the purpose of the suspension is to ensure that there is no interference with the investigation that is being conducted in the interim during their suspension. The applicant points out that if its members are paid their emoluments and they still remain suspended, that would be adequate to ensure that there is no interference with investigations which are being conducted.

[3] The suspension of the members of the applicant involved appears to have been effected by way of a letter which was signed by the Deputy Director-General of the North West Province which was attached to the papers as **"AC4"**. The last sentence of the first paragraph of that letter says that the suspension would be for six weeks which is with effect from 18 January 1999. Today is the 26th February 1999. This means that the suspension has been going on for five weeks and that only a week is left before the six weeks period is up.

[4] The first issue which the court has to deal with is to satisfy itself whether this matter is urgent. This is so for at least three reasons. One

reason is that the respondent must be given enough time to take the necessary steps to oppose such an application. The second is that there is public interest involved in the court allowing matters to be dealt with on an urgent basis. The third is the convenience of the court. Of these factors I am of the opinion that the fact that in this case the respondent appears to have been given notice and served with papers and could have opposed the application if it wanted to, only addresses the first point.

[5] With regard to the second point, namely public interest, that is based on the fact that there are many litigants who have got matters pending in this Court who desire to have their matters dealt with. All of those litigants are awaiting their turn for their matters to be heard. When a litigant therefore applies to court on an urgent basis, the court must be satisfied that the matter is truly urgent and that if the matter were not dealt with on an urgent basis, such person would suffer irreparable damage. In fact, a litigant who approaches the court on an urgent basis asks the court to allow it to jump the queue.

[6] If a matter is not truly urgent the court ought not to allow it to be heard on an urgent basis and the court should let that particular litigant take his place in the queue and come and be heard in court when his turn comes. In this particular matter the applicant sets out under paragraph 5 what it puts forward as grounds of urgency. In paragraph 5.2 the applicant says the suspension without emoluments of its members will create suspicion in the minds of its members' colleagues about their

integrity. I do not think that that point is particularly persuasive to justify allowing the applicant in this matter to be heard on an urgent basis.

[7] The second point is in 5.3. It is that the suspension without emoluments constitutes a penalty despite the fact that no charges have been preferred against the members of the applicant. I am also of the opinion that insofar as the issue of urgency is concerned, 5.3 is not a particularly persuasive point.

[8] The point that requires some consideration is 5.5. There the applicant has the following to say about its members and the alleged urgency of this matter:

"5.5 The families of the individual employees also depend on them to meet their basic needs. This includes the education of their children, payment of accounts, payment of policies to ensure that they do not lapse, payment for medical expenses, transport, boarding, maintenance and the like. This very real prejudice which is ongoing cannot be cured by a subsequent order of either reinstatement or compensation. While Professor Ntwane has stated that their suspension will operate for a period of six weeks, there is no indication from the department as to when, if at all, disciplinary proceedings will be instituted against them. In the event of no disciplinary proceedings being instituted against the

individual employees, they will have been penalised unfairly by being placed on suspension without emoluments."

[9] The point in 5.5 is stated in very general terms. Par 5.5 refers to education of children of members of the applicant. It does not in this regard indicate what schools or institutions of learning such children go to nor does it indicate that all the members involved in this case have got children who go to school and will have a problem. It also does not indicate exactly when next the members would need to make payments for school fees. That is important in the context of this case because in a week's time the suspensions, according to the letter of suspension, will come to an end. It would have been particularly important for the applicant to indicate if by the end of that period there will be any school accounts which would have become due or overdue and that the particular schools involved take the attitude that they will not wait.

[10] In general it may be argued that one could have allowed a matter such as this to be dealt with as urgent on the basis of such disruptions of the children's schooling as the failure to pay their school fees could cause to the children of the applicant's members. However, in this case such weight as that factor might have had is weakened by the fact that in a week's time the suspension will come to an end and no evidence has been placed before the Court to show that there are any school accounts which are already overdue.

[11] In my view all the factors which the applicant refers to in par 5 are stated without sufficient information that would enable the court to conclude that what is going to happen or is likely to happen within the remaining week of the suspensions is such that the applicant's members will suffer irreparable harm. It is possible that after a week the individuals concerned may well have the suspensions lifted as is implied in the letter of the Director-General.

[12] In all the circumstances I am not persuaded that this matter deserves to be dealt with on an urgent basis. Accordingly the matter is struck off the roll.

R M M ZONDO
JUDGE : LABOUR COURT OF SOUTH AFRICA
26 FEBRUARY 1999

CANT : MR G HIGGINS
: Sampson Okes Higgins
ONDENT : NO ATTENDANCE
: 26 FEBRUARY 1999