Sneller Verbatim/HVR

NOT REPORTABLE

IN THE LABOUR COURT OF SOUTH AFRICA

CASE NO: J4790/02

Date heard: 19/12/02

Date Delivered: 19/12/02

In the matter between:

First Applicant

Second Applicant

and

PROVINCIAL COMMISSIONER, S.A.P.S.

First Respondent

AREA COMMISSIONER, S.A.P.S. FREE

Second Respondent

Third Respondent

Fourth Respondent

J U D G M E N T

PILLAY J: This is an application brought as a matter of urgency

for an order *inter alia* lifting the suspension on the applicants which was without emoluments, and certain other relief.

The applicants are senior officers in the South African Police Services. They were arrested and charged on 22 November 2002 with corruption and defeating the ends of justice. Those charges are still pending.

They were invited to make representations about the second respondent's intention to suspend them without pay. The applicants, through their advocate, Mr Jagga, informed the second respondent that the applicants considered the decision to suspend them to be unfair and unlawful as they were not given the opportunity to make submissions before the decision was taken to suspend them.

It was submitted to the second respondent and to this court that the second respondent ought to have given the applicant a hearing before it exercised its election to suspend or to transfer the applicant. That, it is submitted, is a proper construction and interpretation of regulation 15 of the South African Police Service Regulations 1996 published in Government Notice 17682.

The submission for the applicants is that the matter was urgent because, amongst other things, the applicants were

without pay and suffered all the inconveniences and hardships consequent upon that. Furthermore, the applicants were not aware until today that their salary for December would be paid and until this moment they believed that the matter was urgent.

It is also submitted that they do not have any alternative adequate remedy as the hearing before the Bargaining Council to which the dispute was referred might not take place timeously to enable them to avoid the hardships of the nonpayment of the remuneration.

About the balance of convenience, it is submitted that the respondents have to suspend the applicants primarily as a public relations exercise to appease the public as it could not be seen to be keeping in its employ people who have been charged with serious offences.

It is also submitted that the reason for the suspension is to sanction the applicants and not to apply it as a measure to manage the risk.

For the respondents it is submitted that there is nothing in the applicant's case that warrants the court to come to their assistance on any basis let alone on the basis of urgency. The matter is not urgent. The applicants would be paid the

remuneration for this month and the matter would only become urgent in January if they are not paid by then. It is quite possible for the Bargaining Council to convene a hearing of the dispute soon. For these reasons the matter is not urgent today.

As the charges are serious the proper and only remedy available to the respondents was to suspend the applicant. The respondents did so without pay as it was entitled to do in terms of the contract of employment. For these reasons the applications should be dismissed with costs. So it was submitted for the respondent.

In my view the matter is not urgent. Despite the fact that the nonpayment of emoluments creates hardships, it is not in itself a sufficient basis to interfere with the managerial prerogative to exercise disciplinary measures. This has been the law in the majority of cases before this court. In those exceptional cases, where the court has come to the rescue of employees who were suspended, it did so because of special circumstances.

I refer here in particular to the decisions in *Ngwenya v Premier of KwaZulu Natal [2001] 8 BLLR 924 (LC)* and *Koka v Director-General Provincial Administration North-West*

Government [1997] 18 ILJ 1018 (LC) both of which I discussed in my judgment in the matter of *Veary v The Provincial Commissioner of Police and 3 Others [2003] 1 BLLR 96 (LC).*

As the second respondent intends to pay the applicants' emoluments for December, the matter is not urgent. That has been the position which the applicants ought to have been aware of before approaching this court on such an urgent basis.

The applicants have an alternative remedy and that is to pursue their complaint before the Bargaining Council about their alleged unfair suspension. Even if I were to accept the applicants submission that their suspension was unfair because they were not given a fair hearing prior to their suspension and that their submissions about a transfer were not considered fairly and objectively before the decision to suspend them had been taken, the remedy for such unfairness can be pursued if their suspension leads to dismissal or any prejudicial action being taken against them as a result thereof. It could be a procedural defect in a dismissal claim or a substantive ground for an unfair labour practice claim.

It does not detract from the employers substantive right to manage risk. It is not open to the court to interfere with

the management of the risk. The Court is certainly not in a position to do so at this stage without a proper ventilation of all the material issues. The material issues would be the substance of the charges against the applicant. This is not the forum to do that.

In considering whether to grant or refuse relief, the harm to either party could be quite serious. If I were to grant relief to the applicants, the harm to the respondents and the public interest could be quite serious and possibly irreparable, for instance, if the applicants were to interfere in the investigations against them. They have been charged and released on bail subject to conditions about their movements and communication with certain persons.

On the other hand, if I refuse the relief, the applicants will continue to suffer. Whether any harm to them would be irreparable or not, will depend on how soon the dispute can be resolved and how soon the charges can be heard and finalised.

At this stage it is entirely speculative on my part to say that there would be irreparable harm. It may well happen that the dispute could be resolved early in the new year.

In all the circumstances the balance of convenience favours the respondent. Certainly that is the position at this

stage of the dispute between the parties. If matters change, the changed circumstances may warrant a different perspective on these facts. In the meantime I am not disposed to granting the relief.

The order I make is as follows: The application is dismissed with costs.

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JUDGE D PILLAY

APPEARANCES:

PPLICANT : ADVOCATE JAGGA

D BY : VINCENT H TORR ATTORNEYS

ESPONDENT: MR C BECKENSTRATER

D BY : MOODIE AND ROBERTSON