

**IN THE LABOUR COURT OF SOUTH AFRICA HELD IN  
JOHANNESBURG**

Case no: JR 573\05

In the matter between:

**JOHN TSOLO TSHABALALA**

**Applicant**

**and**

**JOHANNESBURG METROPOLITAN  
POLICE DEPARTMENT**

**First Respondent**

**SALGBC**

**Second Respondent**

**COMMISSIONER S KHOZA**

**Third Respondent**

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**JUDGMENT**

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MOSHOANA AJ

**Introduction**

[1] This is an application for review brought in terms of section 145 of the Labour Relations Act 66 of 1995. The application is opposed.

**Preliminary issues**

[2] At the commencement of submissions by Mr Lazarus who appeared for the Applicant, the court enquired as to who briefed

him to appear. He mentioned that N Maharaj Attorneys briefed him. On perusal of the court file, it then appeared that the N Maharaj Attorneys were not on record.

- [3] After an adjournment, a notice of appointment as attorneys of record was filed. The court raised this concern simply because the Notice of set down from the Registrar's office seem to have been forwarded to the office of Infinity Labour and Consumer Protection CC. The Applicant's Heads of Argument seem to have been drawn by someone from Infinity Labour and Consumer Protection CC.
- [4] The standard of those Heads left much to be desired. Mr Lazarus did not even argue on the basis of those Heads. Obviously, the court is concerned that Labour Consultants seem to circumvent the fact that they cannot appear or have a right of audience by assisting poor Applicants from a distance and sometimes bring cases which are without merits and consume much of the court's much needed time.

### **Background facts**

- [5] The Applicant was employed by the First Respondent as a Traffic Officer. On 17 November 2000, the Applicant was suspended. Whilst on suspension, the Applicant's Union obtained amnesty for its members including the Applicant. As a result of that amnesty, the suspension was uplifted. The conditions of the amnesty was for members affected to admit to certain contraventions with a possible lesser sanction.

- [6] Various attempts were made by the First Respondent to inform the Applicant of the uplifting of the suspension. Despite all these attempts the Applicant could not be reached. Then the First Respondent stopped his salary. Despite the fact that his salary was stopped, Applicant did not contact the First Respondent to enquire why?
- [7] Then disciplinary proceedings were instituted against the Applicant for absence without leave. Various attempts were again made to serve notice to attend inquiry on the Applicant, but to no avail. The inquiry proceeded in his absence. The Applicant was then dismissed. The notice of dismissal was sent using the same address which was used for the notices and other correspondence referred to earlier. Lo and behold the Applicant reacted and actually commenced proceedings to challenge his dismissal. The dispute was arbitrated by the Third Respondent. He found that the dismissal was both substantively and procedurally fair. The Applicant now challenges that award in this court.

### **The review**

- [8] Essentially the only ground of review persisted with by Mr Lazarus in court was that there was no direct evidence regarding the fact that the Applicant received correspondence referred to earlier. Accordingly, the Third Respondent misdirected himself and his award is not rationally connected to the evidence presented, he argued.

### **Analysis**

[9] Having perused the award, the record and the material properly placed before the court, it is the view of the court that no case has been made to review and set aside the award. As it was of concern to the Third Respondent, this court is also concerned why if Applicant believed that he was still suspended, did he not query the salary withdrawal? This can only in the court's view point to the fact that the Applicant knew he was no longer on suspension. Accordingly, the Third Respondent's reasoning in rejecting the Applicant's version of events is perfectly in order.

### **Costs**

[10] Both representatives agreed that costs should follow results.

### **Order**

I accordingly make the following order:

1. Review application is dismissed with costs.

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G N MOSHOANA

Acting Judge of the Labour Court

Johannesburg

### **Appearances**

For the Applicant : Mr Lazarus  
For the Respondent : Mr Menani  
Date of hearing : 03\05\2007  
Date of Judgment : 09\05\2007