



**IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN**

Not Reportable

Case Number: C890/2014

In the matter between:

**PSA OBO FRENCH**

**Applicant**

**and**

**HOD: DEPARTMENT OF SOCIAL  
DEVELOPMENT NORTH WEST PROVINCE**

**First Respondent**

**MEC: DEPARTMENT OF SOCIAL  
DEVELOPMENT; NORTH WEST PROVINCE**

**Second Respondent**

**Date heard: 3 December 2015**

**Delivered: 22 April 2016**

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**JUDGMENT**

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**RABKIN-NAICKER J**

[1] The applicant seeks the following relief:

“a) That the decision of the First Respondent, taken on 1 August 2013 (received 30 May 2014) to terminate the services of the Applicant’s member, DD French be reviewed and set aside; in the alternative

b) That the decision dated 03 December 2014 (received on 16 January 2015) of the Second Respondent not to reinstate the Applicant’s member be reviewed and set aside;

c) That it be ordered that the termination of the Applicant’s member’s service was unlawful;

d) That the Respondents be ordered to reinstate the Applicant’s member retrospectively from the date of termination of employment;

e) That the Respondents be ordered to pay the costs of this application in the event that this application is opposed...”

[2] The initial notice of motion did not refer to the date of the decision not to reinstate French because such decision had not yet been made. The said decision was referred to in the answering affidavit. However, leave was granted for the amendment of the notice of motion and supplementary papers to be filed in terms of a draft order by agreement, on the 26 August 2015.

[3] In summary, and for background purposes I note that the answering affidavit records the following:

3.1 Following animosity between French and one of her colleagues which led to criminal charges being laid by the officers against each other on 6 June 2012, French was continuously absent from work from 8 June 2012 due, she claimed, to work related stress and anxiety.

3.2 She initially applied for and had been granted sick leave until the end of July 2012 and had by this time totally exhausted her leave entitlement of 30 days sick leave in a three year cycle.

3.3 By 15 May 2014, and despite the lapse of 10 months French failed to either present herself to work to resume her duties and at least to explain her conduct or to submit medical certificates or to obtain approval of a further extension of incapacity or sick leave despite numerous requests from her supervisor. No sick leave had been approved after 5 July 2012. The respondents cogently submit that the requirements for 17(3)(1)(a) of the PSA were met and that the Labour Court does entertain jurisdiction to review the decision in terms of section 17(2) of the PSA<sup>1</sup>.

- [4] The founding affidavits do not refer to any legal grounds for review. The deponent to the first founding affidavit, an official of the PSA, avers that the jurisdictional requirements had not been met for the invocation of the 'decision' under section 17(3)(i)(a) and that the honourable court "will however be requested to find that the dismissal of our member was unlawful for various reasons". Incongruently, it is also averred in clause 6.4 of the original founding affidavit that French's services were "terminated by operation of law".
- 57] In its supplementary affidavit, the applicant repeats that the requirements for the deeming provisions of section 17 of the PSA were not met and that the Second Respondent 'should have noted same' when it took the decision not to reinstate her. The respondents it is averred, were acutely aware of French's whereabouts during August 2013 and section 17 should not have been followed. Further, it is submitted that the respondents misused the specific section of the PSA, 1994 and had every opportunity to charge French for misconduct.
- [6] Simply put, nothing is pleaded in the founding papers to establish that there are any grounds in law to review what the applicant refers to as the 'decisions' it seeks this court to overturn. This is despite the fact that the applicant is represented by an attorney and counsel in this matter. In motion proceedings, the affidavits constitute not only the evidence, but also the pleadings<sup>2</sup>. The founding papers are

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<sup>1</sup> Referring to inter alia the matter of *Phenithi v Minister of Education and Others* (2006) 9 BLLR 821(SCA) and *Grootboom v National Prosecuting Authority and Another* [2014] 1 BLLR 1 (CC) at paragraphs 14 to 16.

<sup>2</sup> *TRANSNET LTD v RUBENSTEIN* 2006 (1) SA 591 (SCA) at paragraph 28

deficient on both scores. Over and above that no legal grounds are pleaded for review, except the bald allegation that the “the dismissal of our member was unlawful”, the applicant has not sought to get a proper record from the respondent and instead attached some 40 annexures to its original founding affidavit. A party cannot be expected to trawl through lengthy annexures to the opponent's affidavit and to speculate on the possible relevance of facts therein contained<sup>3</sup>.

[9] For the above reasons, it is not necessary for me to consider the matter further. The applicant has simply failed to make a case for the relief it seeks in its founding papers, despite being granted the opportunity to supplement same, and the application must be dismissed. There is no reason that costs should not follow the result in this matter. Accordingly, I make the following order:

Order

1. The application is dismissed with costs.

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H. Rabkin-Naicker

Judge of the Labour Court of South Africa

Appearances:

Applicant: P Venter instructed by Adrie Hechter Attorney

Respondents: MG Hitge instructed by the State Attorney

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<sup>3</sup> MINISTER OF LAND AFFAIRS AND AGRICULTURE AND OTHERS v D & F WEVELL TRUST AND OTHERS 2008 (2) SA 184 (SCA) at paragraph 43.

LABOUR COURT