



IN THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Not reportable
CASE NO.: D1718/18

In the matter between:

RAJENDRA BUDHOO MAHARAJ

APPLICANT

And

EDUCATION LABOUR RELATIONS COUNCIL

1ST RESPONDENT

COMMISSIONER ANAND DORASAMY

2ND RESPONDENT

**MEC: THE DEPARTMENT OF EDUCATION
FOR THE PROVINCE OF KWAZULU NATAL**

3RD RESPONDENT

Heard : 01 July 2021

Delivered : 08 July 2021

JUDGMENT

Maeso AJ

1. This is an application to reinstate the review application and to condone the non-compliance with the time periods contemplated by Rule 7A(6) read with the Practice Directive 11.2.2 of the Practice Manual of the Labour Court.
2. Although this matter was set down on the opposed roll, the third respondent filed its Notice to Abide by the decision of this court. Ms. Seedat of the State Attorneys' office attended proceedings on a watch in brief. The remaining respondents have not opposed the application.
3. The applicant was employed by the third respondent in the capacity of Principal of Avon Primary School.
4. The applicant was charged with misconduct and his dispute was determined by the second respondent in the Education Labour Relations Council (first respondent).
5. The second respondent issued an award on the 23rd March 2018 in which he found the applicant's dismissal to be procedurally fair but substantively unfair.

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6. The second respondent ordered that the applicant must be reinstated but that the reinstatement was without backpay. No reasons for not awarding backpay were given and it is this issue that forms the basis of the review.
 7. It is common cause that the applicant did not file the record and transcript in support of his review application within the 60-day period required by paragraph 11.2.2 of the Practice Manual of the Labour Court of South Africa. In fact, the applicant was 23 days late.
 8. The reasons for the delay are explained in detail in the founding affidavit in support of the application for condonation. It sets out a detailed account of the difficulties experienced by Sneller Recordings to obtain the record due to it not being located by the court on the various occasions that Sneller Recordings tried to uplift same.
 9. As a result, Sneller Recordings was only able to submit its quotation to transcribe the record on the 18 February 2019. Given the applicant's need to raise funds, having been dismissed and no longer earning an income, he was only able to pay Sneller Recordings on the 8th March 2019 to transcribe the record.
 10. The record was transcribed on the 31st March 2019 whereafter it was uplifted and counsel was briefed to deal with the matter.
 11. As indicated earlier the record was served on the respondents 23 days late.

12. Given the explanation above, which is not disputed, the delay is not excessive, and a reasonable explanation has been given explaining the delay¹. The founding affidavit sets out reasonable prospects of success in the review application which again, are not opposed. there is no reason not to grant the relief sought².

13. I make the following order order:

13.1 that the review application under case number D1718/18 be and is hereby removed from the archives and is reinstated;

13.2 that the applicant's non-compliance with the time periods contemplated by Rule 7A(6) read with Practice Directive 11.2.2 be and is hereby condoned.

13.3 there is no order as to costs.

MG MAESO

Acting Judge of the Labour Court of
South Africa

Appearances:

Adv D Pillay for the Applicant

¹ **Uitenhague Transitional Local Council v South African Revenue Service 2004 (1) SA 292 SCA para 4**

² **Melane v Santam Insurance Company Ltd 1962 (4) SA 531 (A)**

LABOUR COURT