

183/92

IN THE SUPREME COURT OF SOUTH AFRICA
(APPELLATE DIVISION)

CASE NO 374/91

In the matter between

THE PUBLIC SERVANTS LEAGUE OF SOUTH
AFRICA AND 14 OTHERS

Appellants

and

THE MINISTER OF WATER AFFAIRS

Respondent

CORAM: HOEXTER, KUMLEBEN, GOLDSTONE, JJA et
NICHOLAS, HOWIE, AJJA

DATE HEARD: 20 AUGUST 1992

DATE DELIVERED: 28 SEPTEMBER 1992

J U D G M E N T

GOLDSTONE JA:

The first appellant is the Public Servants League of South Africa. The other fourteen appellants, members of the first appellant, were employed by the Department of Water Affairs. The Respondent is the Minister responsible for that Department.

The appellants sought an order in the Court a quo declaring that the dismissals on notice of the second to fifteenth appellants, by letters dated 12 June 1989, were null and void. They also sought an order setting aside the dismissals. Their application was dismissed with costs. The judgment by Steenkamp J is reported as Staatsdiensliga van Suid-Afrika en Andere v Minister van Waterwese 1990(2) SA 440(NC). As appears therefrom (at

442 H-J) the first appellant abandoned any claim for relief or for costs.

I need refer to only one of the grounds relied upon by the second to fifteenth appellants, viz. that they were not afforded a hearing by their employer before they were dismissed.

In a judgment handed down in this Court on 20 August 1992, in the case of Administrator of Natal and Another v S A Sibiya and Another, Case No 100/91, it was held that where an employer is a public authority a decision by it to dismiss an employee, whether on notice or otherwise, involves the exercise of a public power. Such a power has to be exercised regularly and in accordance with the principles of natural justice including the principle of audi alteram partem. As it was put in the judgment:

"In the instant case a just and proper exercise of the power to dismiss involved an enquiry into the individual circumstances of each of

the workers whose retrenchment was being considered."

It was added that:

"... elementary fairness required that the respondents should have been accorded a hearing before the appellants took their decision to dismiss the respondents."

Counsel who appeared for the respondent properly conceded that the legal relationship between the second to fifteenth appellants and the respondent in the present case was no different from that which existed between the parties in the Sibiya case. They were not given a hearing before they were dismissed and on that account such dismissals were a nullity. It follows that on this ground they were entitled to the substantive relief claimed by them. It is unnecessary to consider the other grounds relied upon by the appellants in the Court a quo and in this Court.

Although, as has already been mentioned, it abandoned any claim for relief and for costs in the Court a quo, the first appellant is a party to the present appeal. It has not sought any relief. It could hardly have done so in the light of the stance adopted by it in the lower court. This notwithstanding, counsel for the respondent submitted that the the first appellant's appeal should be dismissed with costs. In my judgment that submission should not be upheld. While the first appellant should not have been a party to the appeal, its nominal appearance has not resulted in any relevant additional or wasted costs.

The appeal of the second to fifteenth appellants is upheld with costs. The order of the Court a quo is set aside and the following order is substituted therefor:

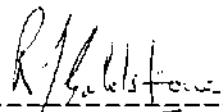
- "1. The respondent's purported dismissals of the second to fifteenth applicants from the

service of the State in terms of letters of dismissal dated 12 June 1989 are declared null and void.

2.(a) The first applicant is ordered to pay its own costs.

(b) The applicants are ordered, jointly and severally, to pay the respondent's wasted costs in respect of the appearances on 23 August 1989.

(c) Save as set out in (b) above, the respondent is ordered to pay the costs of the second to fifteenth applicants."



R J GOLDSTONE
JUDGE OF APPEAL

HOEXTER JA)
KUMLEBEN JA)
NICHOLAS AJA) CONCUR
HOWIE AJA)