

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE HIGH COURT-MTHATHA)**

Case No: 2469/12

Date heard: 28 February 2013

Judgment Delivered: 28 June 2013

In the matter between:

MGQOBOKA PUTULULU

Applicant

and

THE MINISTER OF SOCIAL DEVELOPMENT

1st respondent

THE CHAIRPERSON OF THE INDEPENDENT TRIBUNAL

FOR SOCIAL ASSISTANCE APPEALS (PR NANDAN)

2nd respondent

THE SOUTH AFRICAN SOCIAL SECURITY AGENCY

3rd respondent

JUDGMENT

DUKADA J:

- [1] On the 28 February 2013 I made an order dismissing the application in this matter with each party to pay its own costs. Here are the reasons for the said order.

[2] The facts are briefly as follows:-

The applicant applied for a social grant to the office of the third respondent at Nqamakwe and the application was refused on the 25 March 2010.

The reason for the refusal was given as follows:-

"You have recovered well after being treated for early controlled chronic medication condition.

YOU HAVE RECOVERED WELL AFTER BEING TREATED FOR TPD".

Applicant had been medically assessed by Dr Mbelebane on the 3 February 2010. He diagnosed the applicant to have a special condition he described as "EX-PTB". He also ticked on the form a remark that applicant has *"little medical impediment present, however, due to poor social economic circumstances and lack of employment opportunities applicant is destitute."*

Applicant appealed against the decision refusing his application to second respondent. Second respondent advised the applicant per his letter dated 19 May 2011 that his appeal to the first respondent was unsuccessful because applicant's medical condition was cured pulmonary tuberculosis and that the medical condition was found not to render him disabled and therefore does not affect his functioning to such a degree that he cannot obtain the means to provide for his maintenance.

[3] The applicant has now applied to this Court for the review of the said appeal decision. The applicant in support of his application is making use of the case of one Sinolwethu Bulu whose appeal to the second respondent was successful. Second respondent gave reasons for her decision on appeal as:-

"That the medical officer confirmed that you do have a medical condition: Mental retardation. This medical assessment, however confirmed evidence of a disability which renders you temporarily unable to enter the open labour market or be gainfully employed."

On scrutinizing the medical report on Sinolwethu I could not find a remark that his disability render him temporarily unable to enter the open labour market.

The remark by the doctor which I could find in his medical report is *"minimal impairment present affecting ability to work."*

However, on closer examination of applicant's medical condition and comparing it with that of Sinolwethu, I do not find the two comparable. Applicant's condition is a cured pulmonary tuberculosis, whereas the other has a mental retardation.

- [4] A further point for consideration are the requirements for eligibility for a disability grant. Section 9 of the Social Assistance Act 13 of 2004 provides:-

"A person is, subject to section 5, eligible for a disability if he or she-----

(a) has attained the prescribed age; and

(b) is, owing to a physical or mental disability, unfit to obtain by virtue of any service, employment or profession the means needed to enable him or her to provide for his or her maintenance."

In his case the applicant, as required by section 9 (b) in order to be eligible for the disability grant, has, to show that owing to a physical disability, he is unfit to obtain by virtue of any service, employment or profession the means needed to enable him to provide for his maintenance. The medical report in respect of the applicant does not say that his physical condition causes him to be unfit to obtain by virtue of service, employment or profession, the means needed to enable him to provide for his maintenance.

In my view the applicant should have first made a good case in his situation for his eligibility for a disability grant, and only thereafter he could, if legally necessary, make a comparison with the other case.

In my view, applicant's case does not satisfy the requirements of Section 9 of the Social Assistance Act.

- [5] The applicant alleges that first and second respondents were biased or reasonably suspected of bias in their decision. This allegation is not supported by any facts and consequently it falls to be rejected. The facts which satisfy the requirements of the “*reasonable suspicion of bias*” (See *BTR Industries SA (Pty) Ltd v Metal & Allied Workers Union 1992 (3) SA 673 at 696 i-j*).
- [6] Applicant further alleges that the decision made the first and second respondents is so unreasonable to an extent that no reasonable person could have so excused the power or so perform the function. Again this allegation is not supported by any facts. As analysed above, there is a factual foundation for the decision refusing the application for a disability ground.
- [7] The applicant also alleges that the differentiation between his case and that of Sinolwethu does not bear a rational connection to a legitimate government purpose. I have already analysed the attempt compare these two cases and in my view the comparison is not well-founded and has no merit at all.
- [8] In the circumstances I found that the application has no merit and I therefore dismissed it with costs. As far as costs are concerned I found no reason justifying a departure from the usual rule that costs follow the event.

D.Z. DUKADA
JUDGE OF THE HIGH COURT

Appearances

For the applicant : Adv Mtshabe
Instructed By Khaya Nondabula
Attorneys
MTHATHA

For the 1st and 2nd Respondent: : Adv Bhodlani
Instructed by the State Attorney
MTHATHA