

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Case No. : 5209/06

In the matter between:

MPHETHENG LUCAS RANTSO

Applicant

and

MEC DEPARTMENT OF HEALTH

Respondent

JUDGMENT: CILLIé, J

DELIVERED ON: 15 MAY 2008

- [1] This matter was referred for the hearing of oral evidence in terms of Rule of Court 6(5)(g) on the single issue whether the applicant was informed on the 25 February 2005 by his superior, Mr. Mdluli that his study leave had not been approved. It is common cause that the applicant was absent from work thereafter whilst in fact the study leave had not been approved. The applicant alleged in his affidavit that he was under the *bona fide* impression that his application for study leave would be approved. The whole

background of the dispute is fully set out in my judgment dated 29 November 2007. It is unnecessary to repeat it now and should be read with this judgment.

- [2] The application is solely based on a alleged failure by the respondent to properly take into account when she considered the applicant's possible re-instatement in terms of section 17(5)(b) of the Public Service Act, No. 103 of 1994, the fact that the applicant was under the said *bona fide* impression. The section permits "on good cause shown" the re-instatement of an employee like the applicant who is deemed to have been discharged. When referring the matter for the hearing of oral evidence I had in mind that the *bona fide* misunderstanding under which the applicant allegedly laboured might just constitute the required good cause. As there was a dispute on the papers whether the applicant in fact could have had this impression it necessitated the hearing of oral evidence on this aspect.

[3] The applicant testified that he handed his application for study leave (page 19) to Mdluli aforesaid the morning of the 25 February 2005. Mdluli allegedly told him that he was busy at that moment with other matters but that he would attend to the applicant's application for study leave later. As Mdluli did not get back to him he accepted that everything was in order and accordingly departed on the leave applied for.

[4] Mr. Gabriel Mdluli in his evidence gave a completely different version of the events. He said that when the application was handed to him he told the applicant that as the application lacks the required supporting documents he could not recommend the application. The applicant, according to Mdluli, responded to the effect that he had already paid the fees for the course he intends to follow. According to Mdluli he phoned his superior, one Me Morigihlane who referred him to Me. Nzana whom she instructed to deal with the matter. He left the application in the office of the district manager to attend to it. Mdluli further explained the procedure applicable to study leave. Application must be made six months in advance and it is then considered by the Skills Development Department in Bloemfontein. Arrangements must also be made for a replacement. Mdluli further explained that the applicant's

previous study leave in January/February 2005 was also disapproved. As the applicant is a steward an appointment was made with his labour union to discuss the applicant's absence from work without approved leave. Due to the union representatives' falling ill the discussion had not materialised yet at the time when the applicant applied for the presently relevant study leave.

[5] Me. Morigihlane is the district manager of the Department of Health for the district of Lejwelepoetshwa. She confirmed that it is her signature disapproving the applicant's application for study leave as it appears on page 19. This she did after Mdluli phoned her and reported the events to her. She is adamant that the application was turned down on that very same day. She confirmed that study leave should be applied for well in advance.

[6] Me. Mzanza also testified but her evidence deals with the earlier study leave of the applicant and it does not really give any light on the application for study leave presently

relevant.

- [7] I approach this matter on the basis that the applicant bears the onus to convince me that he has shown good cause for his reinstatement and that the respondent's refusal to do so is capricious and without proper consideration of the relevant circumstances. I came to the conclusion that the applicant failed to do so. Mdluli impressed me as a witness and I have no hesitation in accepting his evidence above that of the applicant. Mr. Phalatsi on behalf of the applicant argued that Mdluli's evidence does not prove that the applicant knew that his application was refused. He submits that it was not Mdluli who had to decide on it and that it is common cause that Me. Morigihlane never informed the applicant of its final refusal. This may be so but Mdluli's informing of the applicant that his application cannot be recommended because it was incomplete should have alerted the applicant that its refusal was inevitable. I cannot escape the conclusion that the applicant despite this decided to absent himself from his work in any event. His

failure to ascertain afterwards whether it had just by change been approved is evident of a lack of *bona fides*. He did not enquire because he knew very well that he would be informed that his absence from duty was without approved study leave. The evidence of Me. Morigihlane that the applicant union's involvement in the previous study leave dispute leaves little doubt that the applicant being a shop steward could not have been under the impression that all was kosher with his study leave.

[8] On behalf of the respondent a copy of the respondent's policy applicable to special leave was made available to the court. Section 8.1 thereof provides as follows:

"Except in exceptional circumstances the employee may not stay away from her/his place of duty unless an application for leave of absence has been lodged in writing and the head of the department has informed her/him that the application has been approved."

The applicant an employee of 20 years plus standing can hardly be believed not to have been aware of this condition in his terms of employment.

[9] The respondent turned the applicant's re-instatement down on the basis that applicant failed to show good cause for his re-instatement. I cannot fault that. The only good cause on which the applicant relied in his application was his alleged *bona fide* believe that his application for study leave had been approved. This he failed to prove.

[10] In the result the application is dismissed with costs.

C.B. CILLIÉ, J

On behalf of the applicant: Mr. N. W. Phalatsi
Instructed by:
N W Phalatsi & Partners
BLOEMFONTEIN

On behalf of the respondent: Mr. S. E. Motloung
Instructed by:
State Attorney
BLOEMFONTEIN

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