

IN THE LABOUR APPEAL COURT OF SOUTH AFRICA

HELD AT PORT ELIZABETH

CASE NO NHE 28/2/1

In the matter between

RICHARD SODO AND 26 OTHERS

APPLICANTS

and

THE GOVERNMENT OF THE EASTERN CAPE

FIRST RESPONDENT

**THE DIRECTOR-GENERAL, EASTERN CAPE
PROVINCE**

SECOND RESPONDENT

JUDGEMENT

NICHOLSON JA

[1] The applicants were employed by the first respondent until their employment was terminated pursuant to rationalisation of the public service on 31 January 1996. They allege that such termination was unfair. They seek relief, reinstatement, compensation and costs. The application is opposed by the respondents who dispute that the

termination was unlawful or unfair.

[2] According to a directive of the acting judge president of this court dated 10 August 1999, the matter was set down for hearing in respect of the ‘... issue whether this dispute relates to a matter which the Labour Appeal Court has jurisdiction to deal with as well as on the issue whether the Labour Appeal Court that should hear this matter is one constituted before a judge with two assessors or one constituted before three judges.’

[3] The applicants seek the relief I have set out above by virtue of the provisions of the Labour Court sitting as Special Tribunal Act 30 of 1995 (>the Act=). The Act was passed pursuant to section 237(4) of the Constitution of the Republic of South Africa Act, No 200 of 1993 (>the Interim Constitution=), which (in ss 236 and 237) dealt with the rationalisation of the public service. The sub sections provided that –

4(a) The labour appeal court established by section 17A of the Labour Relations Act, 1956 (Act 28 of 1956), sitting as a special tribunal in terms of an Act to be passed by Parliament, shall be competent to determine any claim or dispute of right in terms of a law regulating as at 1 November 1993 employment in an institution referred to in section 236(1) and arising out of the implementation of this section and section 236.

[4] Sub-section (4)(e) of section 237, as amended, provided that the Act and the sub-section itself would lapse two years after the commencement of the Interim

Constitution >save that any matter properly before the court ... [before 27 April 1996] shall be heard and determined as if this subsection and the said Act had not lapsed.=

- [5] The applicants' notice of application was dated 22 February 1996 and was served on respondents on 11 March 1996. There have been subsequent delays which have had the effect that to date the matter has not been disposed of. Section 5(3) provides for a speedy hearing, which must take place within 60 days after receipt of the application. There is provision for condonation and an extension of the time limits I have mentioned in section 5(4). The difficulty which the applicants say they have encountered is that the Labour Relations Act 1956 was repealed by the Labour Relations Act 66 of 1995 ('the LRA') and that it is, or no longer may be, possible to constitute an appeal court under the 1956 Act.
- [6] This Court was created by the new LRA and has exclusive jurisdiction in terms of section 173(a) to hear and determine all appeals against the final judgments and the final orders of the Labour Court; and in terms of section 173(1)(b) it has the power to decide any question of law reserved in terms of section 158(4). The relief sought in this application is clearly not an appeal from the Labour Court nor has that Court reserved for the decision of this Court any question of law that arose in those proceedings as provided in the latter sub-section.
- [7] Section 173(2) provides that if, in any proceedings before the Labour Appeal Court,

circumstances arise such as those contemplated in section 102(1), 102 (2) or section 102(8) of the Interim Constitution, the Labour Appeal Court must act in the manner provided for in that section. These sub-sections of the Interim Constitution deal with certain procedural matters which arise if there is an issue which may be decisive for the case, and which falls within the exclusive jurisdiction of the Constitutional Court. In such circumstances this court is required to refer such matter to the Constitutional Court for its decision. Any issue other than an issue referred to the Constitutional Court is suspended pending the decision of the Constitutional Court. Section 102(8) provides that if this Court disposes of a matter in which a constitutional issue has been raised and such court is of the opinion that the constitutional issue is of such public importance that a ruling should be given thereon, it may, notwithstanding the fact that the matter has been disposed of, refer such issue to the Constitutional Court for a decision. It is abundantly clear that these provisions are also not applicable.

[8] In terms of section 175 this Court may sit as a court of first instance when the Judge President so directs. The Judge President did not direct this court to hear this matter under section 175.

[9] This court is, in terms of section 167(3) a superior court that has authority, inherent powers and standing, in relation to matters under its jurisdiction, equal to that which the Appellate Division of the Supreme Court has in relation to matters under its jurisdiction. I do not believe that the present enquiry may be dealt with under its inherent jurisdiction.

[10] From the above it is clear in my view that this Court has no jurisdiction to consider the question put to it. It is therefore not necessary to consider the second question posed above.

[11] We were invited by counsel to make a finding as to which forum should decide this matter and to determine whether the matter was >properly before [such] court ... [before 27 April 1996]=. The court does not give advice nor should it decide a matter falling outside its sphere of competence. Any pronouncement on the matters referred to by counsel would be of less value even than an *obiter dictum* it would be of no assistance to the parties.

[12] Mr Pillay, who appeared for the respondents, together with Mr Bloem, did not seek costs in this matter.

[13] The following order is made

- 1)It is declared that this Court does not have jurisdiction to hear this application;
- 2)the application is struck off the roll;
- 3)there is no order as to costs.

I agree

Conradie JA

I agree

Mogoeng AJA

Date of hearing 21 September 1999

Date of judgement September 1999

Appearance for applicants Adv G Goosen

Appearance for respondent Adv Pillay SC and Adv G Bloem