

**IN THE LABOUR COURT OF SOUTH AFRICA
(HELD AT JOHANNESBURG)**

CASE NO J291/2011

**LIEUTENANT COLONEL
D. S. SEKWATI**

Applicant

and

**BRIGADIER N. P. MASIYE,
STATION COMMANDER, S A
POLICE SERVICE, BRAKPAN**

1st Respondent

**LIEUTENANT GENERAL
M. PETROS, PROVINCIAL
COMMISSIONER, GAUTENG**

2nd Respondent

**COLONEL P. VAN DER MERWE,
PRESIDING OFFICER**

3rd Respondent

JUDGMENT ON LEAVE TO APPEAL

LAGRANGE, J

[1] On 24 February 2011, I dismissed the applicant's urgent application to set aside his suspension without pay on January 2011. I found that the

application was only brought six weeks after the suspension was implemented and as such lacked the necessary urgency to justify being considered as an urgent application. As such, the matter could simply have been struck off the role for lack of urgency alone. Nonetheless, the merits of the applicant's claim were also considered and found to be wanting. I concluded that the applicant had failed to demonstrate a clear right to remain on paid suspension, and that the employer was entitled to rely on the provisions of sub regulation 18 (5) (a) of the South African Police Service Discipline Regulations.

- [2] The applicant now appeals against the decision. The first ground of appeal is that the court erred in finding that the applicant did not address the issue of the six-week delay before he brought the urgent application. The applicant refers to a memorandum which was attached to his founding affidavit. That memorandum was undated and on closer inspection appears to have been the applicant's submissions to the original notice of suspension which he received on 15 December 2010. Once again, the applicant blames the SA PS for delaying his matter until the outcome of criminal charges against him and his wife. I'm satisfied that the applicant has provided no basis for reconsidering whether the six-week delay in launching his application was a justifiable delay.
- [3] In relation to the merits of his application, the applicant reiterates his claim that his non-attendance at the enquiry scheduled for 21 December 2010 should merely have resulted in the matter being postponed by the presiding officer for seven days following which a charge of misconduct could then have been laid which might have resulted in suspension. The applicant believes that the SAPS did not adhere to this regulation and that

the court erred in not finding that it ought to have complied with that stipulation. The provisions the applicant is referring to in this regard are sub regulations 18 (2), (3) and (4) of the above-mentioned regulations. Those regulations provide that if an employee fails to attend a hearing the chairperson must postpone the hearing for not less than seven days and on reconvening the hearing may enquire into whether or not the employee's non-attendance at the previous hearing amounted to misconduct. It is clear that a finding of misconduct may only be made in terms of those provisions if the seven-day postponement on notice was given. The applicant insists that because these provisions were not applied to him, the employer was not entitled to suspend him without pay. If these were the only provisions applying to the postponement of a hearing, the applicant's submissions might have had some merit.

[4] However, sub-regulation 18 (5) (a) clearly envisages that a postponement may either take place in terms of sub-regulation 18(3) or may have been postponed on some other basis. The postponement of the enquiry to 7 January 2011 was granted at the request of the applicant. There is nothing on the face of the wording of sub regulation 18 (5) (a) to suggest that the date to which it was postponed does not fall within the ordinary meaning of the phrase "...on any date to which the disciplinary hearing has been postponed,.." in that provision.

[5] I am satisfied that, in essence the application for leave to appeal, in the main, has simply reiterated the arguments placed before me when the urgent application was heard and has not provided me with any basis for believing that another court may come to a different conclusion on these issues.

[6] In the applicant's submissions filed in July 2011 he advances new submissions that his suspension without pay was an unfair labour practice. This submission was not made at the time the matter was argued, nor was it part of the applicant's claim made out in his notice of motion and founding affidavit. On what was before the court when this application was heard there was no basis laid for making a finding of this nature nor was such a relief sought. In the circumstances, there was no basis on which any court might have made a finding of this nature.

[7] In conclusion, I am satisfied that it is unlikely that another court might come to a different conclusion on the evidence that was placed before me and accordingly the application for leave to appeal is dismissed with costs.



ROBERT LAGRANGE

JUDGE OF THE LABOUR COURT

Date of judgment: 27 September 2011

(In chambers)