



REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, PORT ELIZABETH

JUDGMENT

Not Reportable

Case No: P 487/12

In the matter between:

PHINDIWE PRINCESS KETSHENGANA

Applicant

And

THE MEMBER OF THE EXECUTIVE COUNCIL

DEPARTMENT OF HEALTH

EASTERN CAPE

First Respondent

THE HEAD OF DEPARTMENT

DEPARTMENT OF HEALTH

EASTERN CAPE PROVINCE

Second Respondent

Heard: 14 November 2013

Delivered: 14 November 2013

Summary: Section 17(3) (b) of the Public Service Act 103 of 1994 requires an employee whose services have been terminated in terms of section 17 (3)(a)(i) of the same Act to make representations to the executing authority when the employee seeks to be reinstated. In the event that the representations are made to a person other than the executing authority, the applicant's

application for an order compelling the executing authority to consider her representations cannot succeed.

REASONS FOR JUDGMENT

LALLIE J

- [1] The applicant brought this application for an order directing the respondents to consider her reinstatement as Manager: Nursing, Elizabeth Donkin Hospital, Port Elizabeth in terms of section 17 (5) (b) of Public Service Act 103 of 1994 the (PSA). It is opposed by the respondents.

On 14 November 2013, I granted an order dismissing the application with costs. The applicant subsequently sought reasons for my judgement which are provided below.

- [2] The salient facts of this matter are that the applicant was employed by the Department of Health of the Province of the Eastern Cape ('the Department') as a Chief Matron of the Elizabeth Donkin Hospital in Port Elizabeth. She was appointed as the acting manager of the same hospital from 25 May 2007. Shortly after her appointment, the applicant had to deal with problems which included unprotected strike action directed at her management style. She submitted that some employees who are members of NEHAWU, trade union, held sit-ins in her office and displayed both physical and verbal aggressive behaviour towards her. She reported the situation to her head office in Bisho. Things came to a head on the 29 June 2009, when the applicant was physically pushed from her chair by aggressive employees who hurled abuse at her and threatened her with more violence and death. The Department took a decision to launch an urgent application for an order that members of NEHAWU should desist from their unlawful conduct and unprotected strike action and resume their duties. When a further decision to postpone the filing of the application until further notice was taken the applicant fell ill. She was

put on sick leave by her Doctor until 13 July 2009 at the end of which she did not return to work. A number of letters were addressed to the Department by the applicant's attorneys in an effort to deal with her absence from work. The Department stopped paying the applicant's emoluments. On 8 August 2012, the Department addressed a letter to the applicant informing her of the termination of her services as a result of having absconded from work in terms of 17 (3) (a) (i) of the PSA. She was further apprised of her right to make representations to the executing authority in terms of section 17 (3) (b) of the same Act. On 5 September 2012, the applicant made written representations to the chairperson of the portfolio committee for health to which she received no response.

- [3] It was submitted on behalf of the respondents that this application stands to be dismissed with costs on the grounds that the applicant made her representations to a person other than the executing authority as envisaged in section 17 (3) (b) of the PSA.
- [4] The applicant sought to rely on *De Villiers v Head of Department of Education, Western Cape Province (2010) 31 ILJ 1377 (LC)*, in which the Court dealt with the import of section 17 (3) (d) of the PSA. However, the decision does not detract from the requirement that the applicant had to comply with section 17 (3) (b) and make representations to the executing authority.
- [5] It is common cause that the applicant absented herself from work without permission in excess in a calendar month leading the Head of the Department for Health in the Eastern Cape Province to invoke provisions of section 17 (3) (a) (i) of the PSA. She was apprised of her right to make representations to the executing authority in terms of section 17 (3) (b) of the PSA in the event of seeking reinstatement. She did not. She instead directed her representations to the chairman of the portfolio committee for health thus failing to fulfil the requirement in section 17 (3) (b) of the PSA. She had no right to have the request for her reinstatement considered without having complied with provisions of section 17 (3) (b) of the PSA. Her application was therefore dismissed for her failure to comply with section 17 (3) (b) of the PSA. The

applicant was apprised of her right to make representations to the executing authority, she proffered no valid reason for not complying with the section 17 (3)(b) of the PSA. Her non-compliance was unreasonable and it led the Department to expend public funds to oppose the application. A costs order against the applicant was, in the circumstances justified.

Lallie J

Judge of the Labour Court of South Africa

APPEARANCE

For the Applicant: Advocate Grobler

Instructed by: Micheal Randel Attorney

For the Respondent: Advocate Dala

Instructed by: State Attorney

LABOUR COURT