



REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, PORT ELIZABETH

JUDGMENT

Not Reportable

Case No: P 276/12

In the matter between:

NOMANDLOVU EDNA PETER

Applicant

and

THE MEMBER OF THE EXECUTIVE COUNCIL

DEPARTMENT OF EDUCATION

EASTERN CAPE PROVINCE

First Respondent

THE HEAD OF DEPARTMENT

DEPARTMENT OF EDUCATION

EASTERN CAPE PROVINCE

Second Respondent

THE MINISTER OF BASIC EDUCATION

Third Respondent

THE DIRECTOR-GENERAL

DEPARTMENT OF BASIC EDUCATION

Fourth Respondent

Heard: 26 February 2014

Delivered: 5 March 2015

Summary: The applicant cannot seek this court to compel the Department to determine her application for a transfer when she has not submitted a completed application form in terms of the transfer policy.

JUDGMENT

LALLIE J

[1] The applicant is employed by the Department of Education of the Eastern Cape Province (“the Department”) as an educator, attached to the post establishment of Lilithalethu Junior Secondary School (“Lilithalethu”) in Idutywa. She has, for some time requested the second respondent, to consider her transfer in terms of section 8 of the Employment of Educator’s Act of 1998 (“the EEA”). Her request is based on her need to work in Port Elizabeth, closer to her family. In this application she seeks an order directing the respondents to consider her application from Lilithalethu to another post and thereafter to advise her through her attorneys of the outcome of her application. The application is opposed by the respondents on the grounds that the applicant has not submitted an application for transfer in accordance with the required procedure as set out in circular 19 of 2007 which provides for the procedure to transfer permanent serving employees (“the circular”). The circular requires an employee who wishes to be transferred to complete an application form for transfer.

[2] It is common cause that the applicant’s headmaster told her in 2010 to complete the transfer application form. The applicant conceded that she submitted an incomplete application form on or about 11 August 2011. I have perused the applicant’s transfer application form. It is incomplete and does not comply with the circular. The applicant indicated in the form that she seeks an inter district/ inter provincial transfer. The form required her to complete and submit the whole of sections A and C for the inter district transfer and the whole of sections A and D for the inter provincial one. The way the directions for the completion of the transfer application form are couched is telling. It requires specific information for a specific application. I have perused the application form and it supports the respondent’s version. The applicant has

given no valid reasons for her failure to complete the application form properly. The correspondence between the applicant and the Department did not sanitize her omission to complete the form properly. The form forms part of the transfer policy which the Department has to enforce as part of its obligation to manage its many employees properly. The information the applicant did not provide would have placed the Department in a position to determine her transfer application properly. The correct completion of the application form is a prerequisite for the consideration of the application for transfer. This court cannot compel the Department to consider the applicant's application for transfer when she has not completed and submitted her application correctly and in terms of the transfer policy.

[3] In the premises, the following order is made:

3.1 The application is dismissed.

Lallie J

Judge of the Labour Court of South Africa

APPEARANCES

For the Applicant: Advocate Grobler

Instructed by: Michael Randell Attorneys

For the respondent: Advocate Gauss

Instructed by: The State Attorney

LABOUR COURT