



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not reportable

CASE NO: J2333/15

In the matter between:

MASEMOLA AND 21 OTHERS

Applicant

and

DEPARTMENT OF EDUCATION

LIMPOPO PROVINCE

Respondent

Application heard: 19 June 2018

Judgment delivered: 25 June 2018

JUDGMENT

VAN NIEKERK J

- [1] This is an application in which the applicants seek to have a settlement agreement made an order of court in terms of s 158 (1) (c) of the Labour Relations Act. There is certain ancillary relief sought in prayers 2 and 3 of the

notice of motion, all of which relates to the implementation of the agreement. The court's powers in the present instance extend only to making the agreement an order of court – it is not open to the court in these proceedings to grant the substantive relief of promotion and compensation sought by the applicants that flows from their interpretation of the terms of the agreement.

- [2] Be that as it may, the settlement agreement was concluded on 16 March 2016, between the respondent and some 107 of its employees, 22 of whom are cited as applicants in the present proceedings.
- [3] Clauses 1 to 3 of the settlement agreement reads as follows:
1. The parties agree that the Applicant employees [as per Annexure A to this Agreement] who are appointed as Administration Clerks: NSNP and also meet all the requirements contemplated in Regulation Part V C.6 of the Public Service Regulations will be absorbed into the higher (upgraded) posts with effect from 01 April 2015.
 2. The most recent performance assessment shall, for the purposes of this Agreement, be the 2013/14 PMDS cycle.
 3. It is further agreed that the Applicant employees who do not meet the requirements contemplated in Regulation V C.6 shall be transferred on account of operational requirements.
- [4] It is not in dispute that the reference to 'Administration Clerks' in clause 1 should read 'accounting clerks'.
- [5] The applicants contend that they are entitled to benefit from the agreement. The respondent disputes this, and avers that the settlement affects only accounting clerks responsible for NSNP at circuit level. Certain of the applicants do not fall into that category and accordingly do not qualify to be upgraded. Secondly, the balance of the applicants (but for one) do not qualify for upgrading because they do not meet the requirements of clause 2 of the agreement, i.e. that they should have been rated as 'satisfactory' or above in their work performance for the h2013/14 performance management and development (PMDS) cycle. Finally, the

respondent avers that one of the applicants is not part of the settlement agreement at all.

- [6] In *South African Post Office v CWU* [2013] 12 BLLR 1203 (LAC), the Labour Appeal Court declined to make a settlement agreement an order of court where there was a dispute about the meaning of the agreement. Similarly, in *PSA v National Health Laboratory Service* [2007] 6 BLLR 559 (LC), this court declined to make a settlement agreement an order in circumstances where the validity of competing claims and quantum were the subject of a dispute and would have to be determined by litigation.
- [7] The court has a discretion to make a settlement agreement an order of court – there is no absolute right to such an order. In the exercise of its discretion, the court must necessarily take all of the relevant facts and circumstances into account including, as required by the above authority, the existence of any dispute about the terms of the settlement agreement or its implementation. Further, as the court pointed out in *PSA*, there is little point in making a disputed settlement agreement an order of court where this would simply result in one party claiming the other to be in contempt of that order, in proceedings that would inevitably bring the competing merits of the parties' claims back into play. If the court were to grant the order sought by the applicant, I have no doubt that the next stage of these proceedings would be an application to hold the respondent in contempt on account of what would be alleged to be a willful default of any order granted. It seems to me that little purpose would be served by granting the order sought. The fundamental issue to be determined is whether the respondent has complied with the agreement or, put another way, whether the applicants are entitled to benefit from it. That is a matter best determined by the parties themselves, or by some form of third party intervention. It does not appear that the settlement agreement is a collective agreement, with the result that the provisions of s 24 of the LRA are not available to the parties. They may however wish to consider a referral to private arbitration or some other suitable mechanism to resolve their differences. But for the reasons that I have recorded

above, making the agreement an order of court creates more difficulties that it resolves, and the court must exercise its discretion against granting the order sought.

[8] Finally, for the purposes of s 162, the interests of the law and fairness are best satisfied by each party bearing its own costs.

I make the following order:

1. The application is dismissed.

André van Niekerk
Judge

REPRESENTATION

For the applicant: Adv. G Phajane instructed by Rangoanasha Inc.

For the respondent: Adv. M Mthombeni instructed by the state attorney