

IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT PORT ELIZABETH

CASE NO. P668/99

DATE: 7 AUGUST 2000

In the matter between:

M E L MAJAVU

Applicant

and

INDEPENDANT ELECTORAL COMMISSION

Respondent

J U D G M E N T DELIVERED ON 7 AUGUST 2000

REVELAS, J:

[1] This is a very sad case. It was an extreme example of how undesirable it can be for lay persons to pursue their matters without legal representation. I believe that if the applicant was advised by an attorney or an advocate

or had the benefit of some similar form of assistance she would not have pursued her matter in the manner she did.

[2] The applicant applied to the respondent, the Independent Electoral Commission, ("the IEC") for the position of "voting officer", of which there are two categories, namely that of a presiding voting officer or a deputy voting officer. I understand that the applicant applied for both categories.

She applied in response to an advertisement and filled in a written form. The applicant was unsuccessful with her application. She claims that the respondent had discriminated against her. According to Mr Naidoo, who had the authority to employ employees for the IEC the IEC only employ those persons who had previous experience in election campaigns, of working during the registration weekends. There were three such registration weekends. The applicant did not have this experience. There were also other qualifications required for the position, such as matric and tertiary education but this question was not ventilated. It was undisputed that the applicant was unsuccessful because she did not participate in the three registration weekends that were held prior to the elections.

[3] It is common cause that the applicant on numerous occasions came to the offices of the respondent, which were in the Trust Building in East London, and attended there waiting for a response as to whether she could fill a position or not. It is common cause that she was on numerous occasions told that there was no position for her. According to the applicant, on 26 May 1999 she attended at the offices of the respondent once again and three other persons were employed and she was not. The positions concerned voting stations in the prisons. She testified that, the persons who were allegedly appointed, told her that they were appointed on the same day. It appears that the applicant seeks to base her case on this fact, in support of her claim that the respondent had committed an unfair labour practice in terms of Sec 7, Item 3(1) of the Labour Relations Act 66 of 1995. (The "LRA"). The persons who were employed were black. Two of them were women. The applicant could not be not specific about the gender of the remainder of the persons who were present on that day. She did not provide a basis for any discrimination based on race or gender and certainly not based on religion or any other form of discrimination. When considering whether there was any possible arbitrary discrimination one also has to consider that

the applicant did not have the necessary qualifications. Furthermore, she did not call as witnesses any of the persons who were in fact employed for the positions at the prisons voting polls. Furthermore, and most importantly, both Mr Naidoo and Mr Dke Mgaga gave evidence that at 25 May 1999 the arrangements for the elections were so firmly in place, that it was rather late to train persons at that stage and it was therefore improbable that any persons would be appointed on the day in question. By then the training of the officers had been completed.

[4] The applicant further based her case on an alleged employment contract which lasted for the afternoon of 31 May 1999. According to the applicant, she was employed on this day by the respondent but not given any work and was expected to sit around for an afternoon in the offices of the respondent. She alleged she was promised by Mr Mgaga that she would be paid R50,00 which she could collect on the 7 June 1999. This did not occur. This evidence was vehemently disputed by Mr. Mgaga and was never pleaded. Mr Naidoo disputed the version of the applicant. It is common cause between the parties that the applicant regularly attended the offices of the respondent. I gained the impression from both Mr Naidoo and Mr Mgaga that, although they were sympathetic to her plight, they regarded her persistence as that of a desperate woman, but in addition, as a source of irritation. When employees are overworked and a person sits around them every day refusing to accept no for an answer, this could only create stress. That I accept. Mr Naidoo stated that he saw her on the 31ste of May 1999, just sitting there, without any intention to leave. He was informed that she had been there for a long time. This was not the first time that the applicant had behaved in this way and Mr Naidoo felt that she must be very desperate. He requested his assistant, Mr Mgaga, to see if he could not find anything to do for the applicant. This had been the day for special voting and therefore the office was particularly busy and hectic. Mr Mgaga's told the applicant that he needed no help, that he could not give the applicant anything to do in the line of work. When he noticed that the applicant was still sitting

there he then went to Mr Naidoo. Before he went there, he said he made it clear to the applicant that he had no work to give her. She then demanded payment. Mr Naidoo, as a token of sympathy, according to him, gave the applicant a T-shirt. She accepted the T-shirt and still demanded payment. Thereafter she was requested to leave. She attended at the offices on the 1st, the 2nd and the 3rd of June 1999.

[5] According to the applicant, the incident with the T-shirt occurred on 3 June 1999 when she wanted work as a counting officer. This position was also not given to her. She said when she returned on 4 June 1999 the security guards told her not to attend at the premises again.

[6] The applicant was adamant that Mr Naidoo had employed her for 31 May 1999 but had told her not to return thereafter.

[7] In my view the applicant did not discharge the onus of establishing that an employment relationship existed on 31 May 1999. Even if I accept her version, at best what had taken place was that Mr Naidoo attempted to find her something to do out of sympathy for the day. Both he and his assistant were unsuccessful. The applicant did not do any work, no contract was signed, and there was nothing in the course of events that one would expect to be reminiscent of a normal working relationship or the conclusion of a contract of employment.

[8] The applicant was persistent in her pursuit for employment. There is much unemployment in this country and for many, times are hard. The fainthearted would generally not be as successful in life as the relentless and the impudent.

[9] The applicant expected the respondent to employ her as if the respondent had an obligation to do

so, merely because she made a nuisance of herself at the respondent's offices. Her persistence was tantamount to trespassing, if not intimidation. The respondent's security guards were therefore entitled to ask her to leave.

[10] I have considered the question of costs and in normal circumstances costs would follow the result. For considerations of equity and the applicant's impecunious position, I do not believe it would be appropriate if I order the applicant to pay the costs of the respondent.

[8] I make the following ORDER:

The application is dismissed.

E REVELAS

JUDGE OF THE LABOUR COURT