

SOUTH AFRICA / JUDGMENT

Manyala v MEC of Health, Mpumalanga and Others (JR1187/17) [2021] ZALCJHB 423 (5 November 2021)

[2021] ZALCJHB 423

COURT

Labour Court Johannesburg

BEFORE

M I Mangena

CASE / FILE NUMBER

JR1187/17

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

CASE

NO: JR 1187/17

In

the matter between:

KIBI

LAZARUS

MANYALA Applicant

And

THE

MEC OF HEALTH,

MPUMALANGA First

Respondent

THE

CEO MMAMETHLAKE HOSPITAL Second

Respondent

THE

EXECUTIVE COUNCIL OF

HEALTH Third

Respondent

Considered

in chambers

Date

Delivered: 05 November 2021

JUDGMENT**MANGENA AJ**

- [1] Mr Kibi Lazarus Manyala was employed by the Department of Health Mpumalanga Provincial Government as a groundsman on level 2. He alleges that during May 2005 he was verbally instructed to transfer to the post of a driver with promises that he would be translated as soon as posts became available.
- [2] Around May 2014, another employee who was in the same position as him was translated to the post of a driver and he was left out. Upon becoming aware of the development, he lodged a formal grievance with the Department on 28 August 2014. The grievance was not attended to by the Department.
- [3] On 06 October 2014, Mr Manyala escalated the matter with the Public Service Commission (PSC). The PSC found that the grievance is substantiated and recommended to the MEC for Health that an application be made to the Minister of Public Service and Administration for deviation in respect of translating the rank of Mr Manyala accordingly. The MEC gave instructions to the hospital CEO to implement PSC recommendations by initiating a request memorandum to give effect to the recommendations within 30 days.
- [4] On 17 October 2016, the CEO of Mamethlake Hospital initiated a memorandum to give effect to PSC recommendations. The memorandum requested the Head of Department for Health, Mpumalanga to approve the translation in rank of Mr Manyala from cleaner II (level 2) notch R 86 040-00 to a driver (level 4) notch R 103 494-00 per annum with effect of (sic) 01 April 2014 to date.
- [5] Unhappy with the effective date of translation, the applicant Mr Manyala approached this court to order the MEC for Health together with the other respondents to instate him on level 4 notch from May 2005 with immediate effect as the applicant was appointed as such. In the alternative he asks the court to order that he was translated as driver in rank from level 2 notch to level 4 notch with effect from 10 April 2014. As a consequential relief, he asks that the respondents pay him retrospectively any and all remuneration due to him backdated to when he was a driver which is a level 4 notch position.
- [6] The respondents oppose the application on various grounds set out in the answering affidavit including that this court does not have jurisdiction to adjudicate an unfair Labour Practice dispute which has not been conciliated or arbitrated by the relevant bargaining council or the CCMA. The respondents based their contention on section 191 of the Labour Relations Act[1].
- [7] Section 191 of the LRA provides as follows:

“(1)(a) If there is a dispute about the fairness of a dismissal or a dispute about an unfair labour practice, the dismissed employee or the employee alleging the unfair labour practice may refer the dispute in writing to

- (i) a council, if the parties to the dispute fall within the registered scope of that council; or
- (ii) the Commission, if no council has jurisdiction”.

[8] The respondents are correct and their contention is supported by the case law. In NUMSA v Intervale (Pty) Ltd and Others[2], Cameron J explained the purpose of section 191 as being to ensure that, before parties to a dismissal or unfair labour practice dispute resort to legal action, a prompt attempt should be made to bring them together and resolve the issue before them. Resolving the issues early has benefits not only for the parties who avoid conflict and costs, but also for the broader public, which is served by the productive outputs of peaceable employment relationship. The general purpose of section 191 is to enable the employer to participate in the conciliation proceedings.

[9] In NUMSA v Driveline Technologies[3], Zondo AJP (as he then was) explained the provisions of section 191 as follows:

“The Act requires some disputes to be referred to arbitration, and, others, to adjudication, if conciliation fails. Whether a dispute

will end up in arbitration or adjudication it must first have been referred to conciliation before it can be arbitrated or adjudicated”.

[10] In casu, it is indisputable that no referral has been made to relevant bargaining council to adjudicate an unfair labour practice dispute with regard to the failure of the Department to translate the employee since 2014 when another employee who was in the same position as the applicant was translated. The applicant lodged a grievance and a decision on the outcome of his grievance was made in November 2016.

[11] The employee and the Department are parties to the bargaining council which is the appropriate forum to adjudicate on an unfair labour practice dispute to the extent that the applicant basis his claim on the translation of another employee in 2014.

[12] As regards other prayers regarding appointment effective from 2005, there is no merit in this as neither PSC nor the MEC has approved the applicant’s translation from 2005. After all the 2005 verbal translation was irregular as the official who effected it did not have authority to do so. It is therefore immaterial.

[13] In the light of the foregoing, the respondents have made a case for lack of jurisdiction and for this reason it shall not be necessary to consider other legal points made.

[14] The applicant is still employed by the Department, and in consideration of fairness and equity, it shall not be appropriate to make any cost order against him.

[15] it is ordered that: -

Order:

The application is struck off for lack of jurisdiction.

There is no order as to costs.

M. I. Mangena

Acting Judge of Labour Court of South Africa

Appearances:

For the Applicant: K. S Baloyi and Associates Inc

For the Respondent: Adendorff Theron Inc

[1] Act 66 of 1995

[2]

[2015] 3 BLLR 205 (CC)

[3]

[1999] ZALC 157 (LC) para 38

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