

CIV/APN/499A/00
IN THE HIGH COURT OF LESOTHO

In the matter between:

LEBOHANG NTHETHE	1ST APPLICANT
PITSO MAKHETHA	2nd APPLICANT
KEKETSO THULO	3rd APPLICANT
KHAS'OLA LETSEKA	4th APPLICANT
LEBOHANG MOHASOA	5th APPLICANT
MALEFETSANE MPHUNYANE	6th APPLICANT
TSUMANE RAPAPA	7th APPLICANT
TANKISO MATSEMELA	8th APPLICANT
MPHO HOODI	9th APPLICANT
NTELANE SELLO	10th APPLICANT
LIKHETHO MOHASE	11th APPLICANT
MOHLOMI MAKHETHA	12th APPLICANT
LERATO MPOBOLE	13TH APPLICANT
MAKOAE PUTSOANE	14TH APPLICANT
MALEBO SEBATANE	15TH APPLICANT
'MALESENYEHO 'NOTO	16th APPLICANT
AND	
LESOTHO ELECTRICITY CORPORATION	RESPONDENT

RULING

Delivered by the Hon. Mr. Justice G. N. Mofolo On the day of 12 December. 2002.

2

This is an application in which applicants have approached this court for an order in the following terms:

- a) Directing the Respondent to review its organizational and salary structure in accordance with the agreements between the Respondent's management and Applicants dated 14th May, 1999 and 10th April, 2000.
- b) Directing Respondent to adjust Applicant's respective salaries in line with the said review and to pay Applicants' arrears of salary commencing May, 1997, or such other date as this Honourable Court may find appropriate, together with interest at the rate of 18.5% per annum.
- c) Declaring that Respondent has engaged in a discriminatory, unfair and inequitable practice in as much as it has afforded preferential treatment to the technical staff in the National Control Centre over the technical staff in the other sections of the Respondent's Department, being the Applicants, and directing Respondent to treat like cases alike by placing the Applicants in salary scale 6 like the technical staff in the National Control Centre.
- d) Granting applicants such further and/or alternative relief as this Honourable Court deems fit in the circumstances.

- e) Directing Respondent to pay the costs of this application on an attorney-and-client scale.

The application was opposed and in opposing it respondent have

3

taken certain points in limine. However, in his heads of argument and before me counsel for the respondent had restricted himself to the point that by reason of the application hinging on labour dispute, the proper court of jurisdiction was the Labour court.

Mr. Mafisa who appeared for the applicant has resisted the point in limine taken by the respondents arguing that although on the face of it the dispute appears to be a labour dispute, there are features in the application which could not be adjudicated upon by the Labour Court in that:

- 1) Applicants are asking for a declaratory order of mandamus to compel the respondent to put into effect the agreement;
- 2) They are also seeking rectification
- 3) Applicant is a public body performing public functions;
- 4) Applicants seek interpretation of the constitution, a function outside the ambit of the Labour Court.

As to the jurisdiction of the Labour Court, it is confined to s.24 of the

4

Labour Code Order, 1992 and quite significantly among some of its duties (relevant in the instant application) is sub-section (k) in terms of which the court is empowered.

to assess the fair value of services rendered by an employee in any case in which such services are to be assessed in accordance with the provisions of the code or in any case where the rate of wages or other benefit to which an employee should be entitled were not agreed between the employer and employee or is uncertain what was agreed.'

As I understand the sub-section, where services of employees are to be assessed in accordance with the section and employees have rendered their fair value of services but are not paid the fair value of their services by the employer or where the rate of wages or other benefit to which an employer or employee and the two are uncertain what was agreed, it is the function of the Labour Court to settle the dispute.

In the instant application though, it is not that the employer and employee have not agreed what the fair value of services rendered is nor are they uncertain what was agreed. Applicants are saying that in

5

terms of a salary structure recommended by and approved by the respondent, it would appear though the structure was approved, its implementation is done selectively and unfairly in that some employees of respondents are preferred above others notwithstanding the fact that qualifications and experience is the same. Applicants are asking this court to force the respondent to implement the approved salary structures above board. The application is not based on an inquiry but approved salary structures. It is, according to counsel for applicants, a declaratory order of mandamus.

Mandamus, an order directing a public authority to comply with a statutory duty or its own decision took a slow development in South African courts though recognition of the remedy was affirmed in *Mall v. Civil Commission of Paarl* (1897) 1496 463. In Natal the writ required some status as a common law remedy, too (see Baxter, *Administrative Law*, p. 689). By 1898 the writ of mandamus was

6

admired as a remedy against inferior courts and also in *re Hafagee and licensing Board of Richmond*, (1908) 29 NRL 587. It was after Union that South African courts began to speak of a 'mandatory Interdict' according to Baxter above at. 690; further according to Baxter same page above, mandamus is available to serve two purposes:

- 1) to compel the performance of a specific statutory duty and
- 2) remedy the effects of unlawful action already taken. Significantly, according to Baxter, mandamus as we know it today was the result of 'functional utility of the remedies of English law' being combined with the flexibility of Roman-Dutch interdicts to produce a local remedy.....' p. 690 above.

Not to be forgotten that Roman-Dutch law by reason of our colonial association with the Cape Province, is the proper civil law of this Kingdom.

7

The result is that mandamus has been accepted as an appropriate remedy in the case of public bodies which have refused to exercise their discretion. Thus mandamus has been used as an order directing licencing boards to issued licences. See *Dangor v. Ermelo Rural Licencing Board*, 1927 TPD 795; *Nathoo v. Leydenburg Rural Licencing Board*, 1927 TPD 922; *Dungarchi Morajee & Co. v. Zautpanberg Rural Licencing Board*, 1927 TPD 987; *Nanabhay v. Municipal Council of Johannesburg*, 1928 WLD 153; *Adms Stores (Pty) Ltd v. Charlestown Board*, 1951 (2) SA 508 (N); *Licence Officer, Pretoria v. Kliris*, 1980 (3) SA 674 (T) and *Minister of Law and order (Bophuthatswana) v. Maubane*, 1981 (3) SA 453 (A).

It is clear that invariably such orders were made by superior courts being the Supreme Court. Such orders have also been issued to ministers of justice directing him to disclose certain information to accused during a criminal prosecution - see *Rascher v. Minister of Justice*, 1930 TPD 810, a function that can under no circumstances be

8

performed by the Labour court.

As Prof. Baxtor (p.245) has said, the Industrial Court (our Labour Court) is a creation of the statute and part of the scheme designed 'to avoid inflicting upon the courts an intolerable burden of cases arising out of disputes.'

Another motivation according to Prof. Baxter *ibid* is the need for a greater degree of specialization than that which may be expected of a judge or a magistrate. Also, according to Prof. Baxter the same page (the hallmark of inferior specialised tribunals is their informality resulting in expeditions disposal of cases that courts which are more often dogged in technical formalities are not able to achieve.

Undoubtedly the Labour court has jurisdiction, but its jurisdiction is held in check where matters coming before it require formality and

9

wielding the stick over statutory bodies, nor can it interpret statutes.

On this basis, without having gone into other issues raised by the counsel for the applicant, I am of the view that this court has jurisdiction to entertain the application.

Accordingly, points(s) taken in limine is dismissed with the order that costs be costs in the application. Also, it is ordered that on delivering the court's ruling in this matter to avoid unnecessary delays, the application is to proceed.

G.N. MOFOLO
JUDGE

For the Applicant/respondent : Mr. Moeletsi

For the Respondent/applicant : Mr. Mafisa