



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Panelist: **JOSEPH MPHAPHULI**

Case No: **PSHS625-16/17**

Date of Award: **19 July 2017**

In the matter between:

NEHAWU obo Podile & 2 others

(Union/ Applicant)

and

Department of Health – Mpumalanga

(Respondent)

1. DETAILS OF HEARING AND REPRESENTATION

1.1 The hearing was conducted on 04 July 2017 and at the Respondent's premises in Tweefontein - Mpumalanga. The proceedings were conducted in terms of Section 191 of the Labour Relations Act 66/1995.

1.2 Mr. J Mnisi, Labour Relations Practitioner appeared for the Respondent. Ms Thokozile Hlongwane, NEHAWU Regional Organiser appeared for the Applicants.

2. ISSUE IN DISPUTE

2.1 I had to determine whether the dismissals were fair or not and the appropriate remedy, if any.

3. BACKGROUND TO THE DISPUTE

3.1 The Applicants were employed on 01 June 2015. The Applicants were employed as housekeepers and were remunerated at R 6 800.00 per month. The Applicants' services were terminated on 16 August 2016. Dismissals were for alleged misconduct.

3.2 The Applicants filed for reinstatement in the event of a favourable outcome.

4. COMMON CAUSE ISSUES

4.1 It was common cause that the Applicants responded to a job advertisement referenced MP DOH – Local 1 Feb/15/10.

4.3 None of the Applicants resided in the area of the community served by the facility where they were employed.

4.4 At the heart of the dispute was whether there was a requirement that only job applicants within the service area of the facility were qualified for employment.

4.5 There was also a dispute about whether the Applicants misrepresented facts to gain employment under false pretext.

5. RESPONDENT'S CASE

5.1 Mrs. Matlakala Mahlangu, Assistant Director, Labour Relations testified in the Respondent's case. She investigated a community complainant in the area Tweefontein in July 2016. The complaint was about the appointment of staff outside the area, Tweefontein G to positions to earmarked for occupation by residents of Tweefontein G

5.2 Investigations established that the Applicants misrepresented facts at the time when they applied for the vacancies. As a consequence the Applicants were charged with misconduct. The Applicants were found guilty as charged and were dismissed.

5.3 The criteria set for cleaners at the interview stage was that residents of Tweefontein G would receive preference.

- 5.4 Mrs. Podile gave an incorrect residential address to the ward councilor when the residential question was investigated.
- 5.5 It also emerged that the residential address supplied by the Applicant in her CV was incorrect.
- 5.6 Mrs. Masangu gave different addresses at different points. The address in Tweefotein was given by Mrs. Masangu when applying for the job. During the investigation the Applicant gave another address which is in the locality of Gemsbok.
- 5.7 Mrs. E.K Mahlangu used the Tweefotein G address which was her previous address. Mrs. Mahlangu did not update her residential address at the time of applying for her job.
- 5.8 She represented the Respondent in the pre-dismissal enquiry.
- 5.9 Mrs. Mthimunye, appointed by the community to represent the community gave evidence.
- 5.10 She confirmed that she physically visited the residential properties provided as the Applicants' places of residents only to find that this was not the case.

6. APPLICANTS' CASE

- 6.1 Mr Langa Mtsweni, a member of the public testified. He was resident at 222 Tweefontein F. He was familiar with Mrs. Masangu. Mrs. Masangu ordinarily resided in Gemsbok since the year 2015, about April of that year.
- 6.2 The Applicant, Mrs. Masangu's home was in Gemsbok where her parents lived. The Applicant was the witness's aunt's daughter.
- 6.3 Mrs. Zimu testified. She was resident at 38 Tweefotein E. Tweefotein was divided into two. One section was commonly known as the RDP section and another was just known as Tweefotein E. Mrs. Podile was her niece and shared the residence with her.

6.4 Mrs. Podile has shared accommodation with her from the period Mrs. Podile's parents passed on. Mrs. Podile has been staying with her for the past ten years or so.

6.5 Mr. George Skosana testified. He was ordinarily resident at Tweefotein E. Mrs Mahlangu was her aunt and had resided at Tweefotein for as long as he could recall.

6.6 Mrs. Mahlangu was no longer staying at his parents' residence but was staying with her grandmother. The grandmother's house was Mrs. Mahlangu's home and her parents' home.

7. ANALYSIS OF EVIDENCE AND ARGUMENT

7.1 There was no dispute that the services of the Applicants were terminated at the instance of the Respondent. This being the case, the onus to establish the fairness of the dismissal rest with the Respondent.

7.2 The Respondent called two witnesses to testify in its case. The testimony of the assistant director was to the effect that the Applicants falsified information supplied at the point of employment.

7.3 Further that the Applicants secured employment under false pretext. The Applicants' representations had disqualified the Applicants for continued employment.

7.4 A community representative supported the assistant director's testimony. The representative's testimony was to the effect that she was part of a delegation that visited the places of residence provided by the Applicants in their employment application forms.

7.5 The visits established that the Applicants were not resident at the said addresses and were not known by the occupants of the said properties.

7.6 The Applicants' case was based on the testimony of relatives, two of whom testified that the Applicants had moved to their original homes. This being Mrs. Masangu and Mrs. Mahlangu.

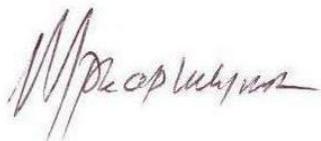
- 7.7 Only Mrs. Podile was said to be residing at the address provided in the employment application form.
- 7.8 Mrs. Podile's aunt, like the other two witnesses was in no position to substantiate her aversion. Mrs. Podile's aunt however, conceded that the common way to prove that one was resident at the particular address was by way of a letter from the local authority.
- 7.9 Mrs. Podile's aunt has used this method in the past when called upon to give proof of residence.
- 7.10 All the Applicants had nothing to show as proof of residence and the testimony in their respective cases did not establish proof of residence.
- 7.11 There was however conclusive evidence that Mrs. Mahlangu and Masangu did not reside at the addresses specified in the employment application forms at the time of dismissal.
- 7.12 In the absence of any evidence to the contrary the conclusion that Mrs. Masangu and Mrs. Mahlangu temporarily resided at the given addresses only on paper and to qualify for employment in Tweefontein G was unavoidable.
- 7.13 I find Mrs. Mthimunye's evidence convincing and probable. Mrs. Mthimunye was resident in the affected area and a community activist who did not act in her own interest, but those of the community.
- 7.14 There would be no logic for Mrs. Mthimunye acting in the interest of the community to act in a manner that prejudices members of the community she represent and with the backing of the community.
- 7.15 All factors considered, I find favour with the Respondent's version. To this end I find that the offence namely misrepresentation was committed and that the offence was a legally recognised cause for dismissal.

7.16 The Applicants indicated that it would raise issues pertaining to procedural irregularities but led no evidence in this regard.

7.17 Accordingly it is my determination that the Respondent's version of events leading to the termination of the Applicants' services passed muster of Section 188 of the Act.

8. AWARD

8.1 The dismissals were for a fair reason and were effected in accordance with a fair procedure.



Joseph Mphaphuli

Signed

PHSDSBC Panelist

19 July 2017