IN THE HIGH COURT OF SWAZILAND	
Civ. Case No. 1369/1996	
In the matter between:	
Doris E.T. Mncube	Plaintiff
vs	
The Government of the Kingdom of Swaziland	Defendant
CORAM	S.W. SAPIRE, ACJ
FOR PLAINTIFF	ADV. FINE
FOR DEFENDANT	MR. SIMELANE
Judgment	

(21/1/97)

The applicant in this matter Doris Mncube was formerly an employee of the Swaziland Government, having joined the service in 1972. By 1986 she had achieved the rank and position of accountant and was attached to the Ministry of health stationed at the Swaziland Institute of Health Sciences.

In September 1986 she received a letter from the Ministry where she was employed in terms of which she was suspended from duty with immediate effect, pending investigations against her by the police of allegations of misappropriation of Public Funds.

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She remained under suspension until March 1991 when she received a letter from the Civil Service Board informing her that she had been dismissed from employment with effect from 28th August, 1987. A copy of the letter is attached to the founding affidavit. A further letter was sent to the applicant advising her that she had been dismissed with effect from the 22nd day of September 1986, being the date on which she had been suspended.

What the Applicant does not say in her founding affidavit in this application is that before she received notice of her dismissal she was charged, pleaded guilty to, and was convicted of theft. She did not receive a custodial sentence in which case her dismissal from the service would have been automatic.

After holding continuous consultations with various officials of the First Respondent with a view to securing her return to work, without any success, in June 1995, some ten years after her dismissal, the applicant made application to this court to have both her suspension and subsequent dismissal set aside. She was unsuccessful in this court, but on appeal an order was made, in April 1996, setting aside her dismissal. The order of the Appeal Court makes no mention of the suspension order which preceded the dismissal.

The successful appeal was followed by a letter of demand from the Applicant's attorney on her behalf, for ten years salary, reinstatement on the pay roll and to be allocated a post.

There is now a dispute as to the effect of the order of the Court of Appeal. The applicant contends that

the whole matter is res judicata and that she is entitled to have her demands met.

The Attorney General contends otherwise.

It is the Government's view that the effect of setting aside the dismissal of the applicant restores the parties to their respective positions prior to the dismissal, and that the applicant remains under suspension, and that is open to the Department now to hold the enquiry, the absence of which was the grounds of setting aside of the dismissal. Acting in accordance with the view taken by the Attorney General the Second respondent, (The Civil Service Board) wrote to the applicant through her attorney informing her of a charge of misconduct that was now laid against her and requiring an answer from her by not later than 17th June 1996. The letter and charge sheet are annexed to the founding affidavit marked "K" and "L" respectively. The applicant contends that the second respondent is precluded now from holding the enquiry as the Court of Appeal has finally determined the matter.

The order which the applicant seeks is one which will prevent the second respondent from proceeding with the enquiry and compel the Department to reinstate her to her former position.

It would be inappropriate for me to express any views on the merits of the case, as I am of the view that this Court has no jurisdiction in the matter. Section 5(1) of the Industrial Relations Act No. 1 of 1996 confers exclusive jurisdiction on the Industrial Court in matters of this nature.

As "the Court" is defined as the Industrial Court, by definition the Government is included in the word "employer" (Section 2); the word "dispute" is also defined in Section 2 to include any dispute over the disciplinary act, dismissal, employment, suspension from employment, re-employment or reinstatement of any person or group of persons, it seems clear to me therefore that this is a matter which falls within the ambit of the Industrial Relations Act and should properly be brought before the Industrial Court. The matter is not free from some difficulty, as the wording of Section 5 is not altogether clear. I cannot on this ground however assume jurisdiction as the relief claimed by the Applicant would seem to relate to matters dealt with by the Act.

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In the circumstances I am constrained to dismiss the application with costs, which are to include counsel's fees.

S.W. SAPIRE

ACTING CHIEF JUSTICE