

IN THE HIGH COURT OF SWAZILAND

Civ. Case No. 2740/95

In the matter between:

PRINCESS MNTSHALI Applicant

Vs

THE PRINCIPAL SECRETARY 1st Respondent

THE EXECUTIVE SECRETARY - TSC 2nd Respondent

THE ATTORNEY GENERAL 3rd Respondent

CORAM: S.W. Sapire A.C.J.

FOR APPLICANT Mr. B. Sigwane

FOR RESPONDENTS Mr. P. Simelane

Judgment

(12/8/96)

The applicant sought an order as a matter of urgency declaring that the suspension of the applicant from her duties as teacher at St. Marks High School was unlawful. She also asked for an order interdicting the second respondent from withholding the portion of her salary-pending the outcome of this application and furthermore reinstating her in her appointment as teacher at St. Marks High School.

2

On the 17th of October 1955 an Order was made that the second respondent was to be interdicted and restrained from withholding any portion of the applicant's salary pending the finalisation of the present application. The matter was then postponed to the 1st of December and was further postponed on a number of occasions until it was heard some 8 months after the application was originally made.

It is a matter of some concern that an urgent matter such as this seems to have remained pending for so long a period.

The Applicant in her filing affidavit describes herself as an adult female teacher and a member of the teaching service employed by the Ministry of Education posted at St. Marks High School Mbabane.

The respondents are in effect the Ministry of Education. The applicant was posted to St.. Marks High School in 1987 where she teaches Siswati to all Forms falling under the "TU" stream. She is head of the Siswati Department.

On the Third day of November 1995 she received a letter from the School's Head teacher dated 16th October 1995 addressed to the School Manager. She actually received a copy of the letter. The letter was informing the management of the school administration's failure to secure the applicant's

attendance at a meeting which was alleged to have been scheduled for 2.00 p.m. on the 16th of October, 1995 at the Ministry. The letter was written by one M N. Ballarin who describes himself as the Headteacher. The letter records that the Administration had failed to "convince Miss Mntshali to honour your directive to come to the Ministry of Education".

3

The applicant states that she has never been made aware of the existence of a post of School Manager at the school let alone the identity of the incumbent thereof. She also denies that she has at any time ever been in receipt of a letter inviting her to any meeting whatsoever with the manager.

Subsequent to receipt of this letter she received a further letter from the 1st Respondent dated the 2nd of November 1995 informing the Applicant of her immediate suspension from duty as a result of acts of misconduct that she is supposed to have committed. The effect of the suspension incurred what is called appropriate action of withholding half the applicant's monthly salary in terms of regulation 15 (5) of the Teaching Service Regulations of 1983.

The letter of the 2nd of November 1995 addressed to the applicant by the Principal Secretary copies of which were sent to the Headteacher of St. Marks High School, the R.E.O. Hhohho and the Secretary to the Teaching Service Commission.

The letter alleges that the applicant's not attendance at the meeting of the 15th of October and again of the 17th of October in itself constituted serious misconduct and the letter goes on to say that the applicant was in breach of Regulation 15 (c) and (d) of the Teaching Service Regulations of 1995. The letter then made reference to the applicant's conduct in Durban when apparently she accompanied a school tour to Kwazulu/Natal.

4

Reference is also made to the evidence of certain individuals and that on the basis of this evidence the Principal Secretary considered that the applicant had shown great irresponsibility and carelessness this again being in breach of Regulation 15(d) of the Teaching Service Regulations which makes negligence or lazziness in the performance of her duties misconduct on the part of that teacher. The letter ended by suspending the applicant from duty with immediate effect.

Of importance is Regulation 15 (2) of the Regulations to which reference is made. The effect of this Regulation is that the Manager of a teacher who is alleged to have misconducted himself in terms of Sub-Regulation 1 shall firstly inform a teacher in writing of the misconduct alleged against him and (b) allow the teacher an opportunity to present his defence in writing. It is common course that this was not done in the present case. The argument for the applicant was that in this regard the failure to give matters to the applicant of her alleged misconduct and to afford her an opportunity to state her defence in writing amounted to such an irregularity that the suspension had to be set aside.

Mr. Simelane who appeared for the respondent argued strenuously that although there had been no actual compliance with the provisions of the Regulations there has been substantial compliance in that the rule of natural justice which entitles the applicant to a fair hearing had not been breached.

In the first place the respondent contend that the applicant was requested and/or subpoenaed to attend the meeting with him but that she expressly and adamantly refused to do so.

5

There is nothing to show that the Applicant was in anyway-obliged to attend the meeting especially as

she was entitled in the first instance to state her defence to any charges in writing.

In paragraph 5.2 of the replying affidavit it is said that the procedures were exhausted as the applicant had written out her own account of the trip in her own defence. A copy of the report is attached to the affidavit. The fact that such a report was made in no way cures the great defect in the procedure adopted by the authorities. The way that the report was prepared indicated that the applicant had not been informed in writing of the charges of misconduct which she was facing and the report is not directed as a defence to any particular charges. Furthermore the grounds for the suspension seem to be that she did not attend the meeting not the conduct in Kwazulu/Natal.

It is not necessary to go into the matter and the various contentions as to what took place on the Durban trip which affairs indeed have been catastrophic and ill-organized. That in itself does not entitle the authorities to suspend the Applicant.

The suspension itself seems to be for an unspecified time and yet this is not what is envisaged in the Regulations.

I am satisfied that there has been a gross miscarriage of natural justice in this matter and that the applicant is entitled to the relief she requests.

6

The application will therefore succeed and an order is made one declaring that the suspension of the applicant from her duties as a teacher in St. Marks High School is unlawful and is accordingly set aside. The Respondents are to pay the Applicant costs.

S. W . SAPIRE

ACTING CHIEF JUSTICE