



REPUBLIC OF SOUTH AFRICA

***THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA***

Case number: 228/06

Reportable

In the matter between:

**LEGAL AID BOARD
APPELLANT**

and

**GERTRUIDA CECILIA JORDAAN
RESPONDENT**

CORAM: FARLAM, NUGENT, CONRADIE, PONNAN et
MAYA JJA

HEARD: 21 NOVEMBER 2006

DELIVERED: 30 NOVEMBER 2006

SUMMARY: Jurisdiction – High Court’s power to grant interim relief pending application to review decision of disciplinary tribunal appointed by the Legal Aid Board.

Neutral citation: This judgment may be referred to as *Legal Aid Board and Jordaan* [2006] SCA 157 (RSA).

JUDGMENT

FARLAM JA

[1] After the respondent in this matter, who is an employee of the applicant, the Legal Aid Board, had been found guilty on two charges of misconduct by a disciplinary tribunal appointed by the applicant, she instituted review proceedings against the applicant in the Pretoria High Court, praying for an order setting aside the decision that she was guilty of the misconduct alleged. Subsequently she successfully applied for an order interdicting the applicant and the chairperson of the disciplinary tribunal from continuing with the hearing pending the finalization of the review application.

[2] The applicant's application for leave to appeal was granted by the learned judge in the court *a quo* but limited to the question as to whether '[the] court lacked jurisdiction to hear and decide the matter'.

[3] According to a letter sent by the registrar to the applicant the appeal record had to be lodged by 12 April 2006. As the record was not filed by that date but only on 4 May 2006, the applicant has brought an application for condonation of its failure to file the record timeously and for an order reinstating the appeal.

[4] This application is opposed by the respondent, who contends, among other things, that the applicant has no prospects of success on the merits. If this contention is correct there will be no point in granting condonation.

[5] Counsel for the applicant did not challenge the proposition that the high court normally has jurisdiction to grant an order preserving or restoring the *status quo* pending the final determination of the rights of the litigants in a matter before it. Indeed its powers go even further than that because, as has been held by the Constitutional Court, the high court's jurisdiction to grant

interim relief depends on its jurisdiction to maintain or restore the *status quo* and not on whether it has jurisdiction to decide the main dispute (see *National Gambling Board v Premier, KwaZulu-Natal* 2002 (2) SA 715(CC) at paras 45-52).

[6] In the present case it goes without saying that the high court will have jurisdiction to decide what I understand will be one of the issues arising in the main application, *viz*, whether the disciplinary enquiry instituted by the applicant constituted administrative action under the Promotion of Administrative Justice Act 3 of 2000. To answer that question the high court will have to decide which of the divergent views expressed in the recent decision of this court in *Transnet Ltd v PNN Chirwa* [2006] SCA 131 (RSA) was correct. That being so, unless there is a statutory provision ousting its jurisdiction to give interim relief in a case such as this, there can be no question as to the high court's jurisdiction to grant the order presently under consideration. Counsel for the applicant contended that the high court's jurisdiction to grant the interim order sought in this matter was ousted by s 157(1), read with s 158(1)(a)(ii) and (iii), of the Labour Relations Act 66 of 1995.

[7] Section 157(1) and s 158(1)(a) read as follows:

'157(1) Subject to the Constitution and section 173 [which deals with the Labour Appeal Court], and except where this Act provides otherwise the Labour Court has exclusive jurisdiction in respect of all matters that elsewhere in terms of this Act or in terms of any other law are to be determined by the Labour Court.'

'158(1) The Labour Court may –

- (a) make any appropriate order, including –
 - (i) the grant of urgent interim relief;
 - (ii) an interdict;
 - (iii) an order directing the performance of any particular act which order, when implemented, will remedy a wrong and give effect to the primary objects of this Act;
 - (iv) a declaratory order;
 - (v) an award of compensation in any circumstances contemplated in this Act;
 - (vi) an award of damages in any circumstances contemplated in this Act; and
 - (vii) an order for costs.'

[8] As is clear from the other sub-paragraphs of s 158(1)(a), the sub-

paragraphs relied on by counsel for the applicant do not relate to ‘matters that elsewhere in terms of [the] Act . . . are to be determined by the Labour Court’, to use the language of s 157(1), but to the *powers* of the Labour Court which it may use in the course of exercising the jurisdiction conferred upon it in the Act. It follows that counsel’s submission that the high court’s power to grant the order appealed against in this case was ousted by s 157(1), read with s 158(1)(a)(ii) and (iii), must be rejected.

[9] A moment’s reflection indicates that the position can hardly be otherwise. Once one accepts, as one must, that the high court has the jurisdiction to determine whether the disciplinary enquiry under consideration in the main case constituted ‘administrative action’ under the Promotion of Administrative Justice Act, then it is difficult to see how Parliament could ever have intended to vest exclusive jurisdiction to grant interim relief pending that determination in the Labour Court. But the upholding of counsel for the applicant’s contention would necessarily involve the conclusion that that was Parliament’s intention.

[10] In the circumstances I am satisfied that the applicant has no prospects of success on the merits in this case and that the condonation sought must be refused, with costs.

[11] The following order is made:

The application for condonation and for the reinstatement of the appeal is dismissed with costs.

IG FARLAM

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JUDGE OF APPEAL

CONCURRING
NUGENT JA
CONRADIE JA
PONNAN JA
MAYA JA