



CONSTITUTIONAL COURT OF SOUTH AFRICA

South African Council for Educators v Deon Scheepers & Others

CCT 127/22

Date of judgment: 12 July 2023

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On 12 July 2023, at 10h00, the Constitutional Court handed down judgment in an application for leave to appeal against the judgment handed down by the High Court of South Africa, Free State Division, Bloemfontein. The High Court held that the decision of the applicant, the South African Council for Educators (SACE) to institute disciplinary procedures against the first respondent (Mr Scheepers) was irregular and unlawful and thus set it aside.

Mr Scheepers was employed by the second respondent, the Department of Education, Free State Province, as a school principal on 1 January 2013. Following several disputes between Mr Scheepers and the School Governing Body of Grey College Secondary School (SGB), the SGB declared that there was a breakdown of the trust relationship between the SGB and Mr Scheepers. As a result, the HOD established an independent task team (ITT) to investigate the underlying cause that led to the conflict between Mr Scheepers and the SGB. The ITT conducted an investigation from 28 January 2019 to 21 February 2019 and submitted its report to the HOD on 15 March 2019.

The ITT report recommended to the HOD that Mr Scheepers be charged with serious misconduct and be dismissed if found guilty of the charges of fraud and corruption in terms of section 17(1)(a) of the Employment of Educators Act 76 of 1998. Furthermore, the report stated that Mr Scheepers violated section 16A(2)(g) of the South African Schools Act 84 of 1996. Additionally, that he contravened section 18(1)(f) of the Employment of Educators Act and breached the written undertaking of confidentiality. Pending the outcome of the disciplinary process undertaken by the Department, the SGB lodged a complaint against Mr Scheepers with SACE.

Following the complaint, SACE notified Mr Scheepers that its ethics committee would be conducting an investigation to determine whether there was sufficient evidence to substantiate the allegations of a breach of the Council's Code of Professional Ethics (the Code). On 28 January 2020, Mr Scheepers made submissions in response to the ITT report at the request of the HOD. On 20 February 2020, Mr Scheepers made further submissions on the same report at the request of SACE.

On 18 March 2020, the HOD informed SACE that it was circumventing the Department's processes by conducting a dual disciplinary process. Notwithstanding this notice, SACE served Mr Scheepers with summons on 31 July 2020 to appear before its disciplinary tribunal. Mr Scheepers' attorneys informed the applicant that an investigation was already pending before the HOD and that SACE failed to follow a proper investigative procedure.

Subsequent, to the notification from Mr Scheepers' attorneys, on 17 September 2020, SACE withdrew the charges against Mr Scheepers due to non-compliance with its own procedures. On 10 November 2020, Mr Scheepers was again served with a summons to appear before a disciplinary panel on a number of charges relating to a breach of the Code. Aggrieved by this decision, Mr Scheepers launched a review application in the High Court.

Before the High Court, Mr Scheepers sought an order declaring the decision of SACE to be declared irregular, unlawful, and invalid. The issue before the High Court was whether the applicant's investigation complied with the prescripts of section 14(2)(b) and (c) and section 14(7) of the South African Council for Educators Act 31 of 2000 (SACEA) as well as the Code. Mr Scheepers submitted that the decision by SACE to refer the matter to a disciplinary hearing was procedurally flawed, as it was not preceded by an independent investigation as required by the SACEA and the Code.

SACE opposed the application and alleged that an investigation was conducted. It contended that a panel was constituted and confirmed the contents of affidavits already in the panel's possession. The panel then prepared a report and made recommendations to the disciplinary committee. The report endorsed the findings of the ITT, which report was submitted by the SGB despite strict conditions of confidentiality imposed by the HOD.

The High Court held that SACE failed to conduct an investigation in terms of the prescripts of the relevant legislation and that its decision was based on a mere confirmation of the contents of the ITT report. Furthermore, the High Court held that SACE contravened section 41 of the Constitution in pursuing a disciplinary process parallel to the Department as this implicated Mr Scheepers' rights to a fair trial.

The High Court further held that the decision of SACE was reviewable under the provisions of PAJA and it was procedurally unfair as it was based on the unauthorised dictates of another person. According to the Court, the SGB's conduct contravened section 20(1)(e) of the South African Schools Act which requires the SGB to adhere to any actions taken by the HOD to address the incapacity of a principal to carry out his duties effectively. For these reasons, on 29 July 2021, the High Court held that SACE's decision to institute

disciplinary procedures against Mr Scheepers on the basis of the SGB's complaint was irregular and unlawful and set it aside. It ordered SACE to pay the costs of the application. SACE sought leave to appeal from the High Court and the Supreme Court of Appeal. The applications were dismissed with costs.

Before this Court, SACE sought condonation for the late filing of its application for leave to appeal. SACE submitted that the matter engages this Court's jurisdiction because the High Court's decision impacts the application of the Code and results in an impermissible and restrictive interpretation of how SACE exercises its disciplinary powers.

On the merits, SACE submitted that the purpose of a preliminary investigation is to determine whether there exists a reasonable basis to institute a disciplinary hearing. SACE contended that there was no basis for the High Court to interfere with the exercise of its discretion and that the High Court's interpretation of an investigation is inconsistent with the purposive construct of the SACEA and the Code. According to SACE, the cumbersome interpretation adopted by the High Court is not supported by the SACE Act.

SACE further submitted that the procedural unfairness finding of the High Court is incorrect, because it presupposes that its powers as the regulator of the educators' profession are of a lower status than those of the employer of an educator, and secondly the finding further presupposes that the prospect of two disciplinary hearings on the same set of facts automatically raises procedural unfairness. It submitted that the proceedings were fair because Mr Scheepers was given an opportunity to present his case. It contended that Mr Scheepers is bound by his employment contract concluded with the Department, and is also subject to the authority of SACEA as the regulator.

On costs, SACE submitted that it is participating in these proceedings to uphold the public interest in disciplining educators. According to SACE, there are exceptional circumstances warranting this Court's intervention on the costs' orders of the Supreme Court of Appeal and the High Court because the High Court provided no reasons for its costs order and SACE was not malicious in the proceedings.

Mr Scheepers opposed the applications on the following bases. First, the application raises neither a constitutional issue, nor an arguable point of law, and thus does not engage the jurisdiction of the Court and the condonation application must be refused. Second, the respondent submitted that SACE did not conduct an independent investigation and simply latched onto the ITT report. Third, the High Court judgment does not result in SACE's disciplinary powers being ousted when an educator is being investigated by their employer. The second and third Respondents abided the decision of this Court.

In a unanimous judgment penned by Baqwa AJ, the Constitutional Court held that the application falls to be dismissed with costs. It reasoned that, on an evaluation of the interests of justice criterion, leave to appeal should be refused as the resolution of the question whether SACE conducted a proper investigation is factually laden and further that these type of matters should be resolved on a case-by-case basis. In conclusion, the Court

held that its view on the merits would not result in a distillation of any principles by which SACE and its functionaries can uniformly apply in their disciplinary processes.