



Collaboration Space / UCT Equality Law Database / 2005

# ALEXANDRE V PROVINCIAL ADMINISTRATION OF THE WESTERN CAPE DEPARTMENT OF HEALTH

Created by Jenny Erasmus [Administrator], last modified on May 17, 2013

YEAR: 2005PLAINTIFF / APPLICANT / APPELLANT: ALEXANDREDEFENDANT / RESPONDENT: PROVINCIAL ADMINISTRATION OF THE WESTERN CAPE DEPARTMENT OF HEALTHCOURT: LABOUR COURTCITATION: (2005) 26 ILJ 765 (LC); (2005) 6 BLLR 539 LCPOST / PRIOR ACTION: n/aJUDGE(S): MURPHY AJGROUND(S) OF DISCRIMINATION: RACESTATEMENT OF FACTS:

The applicant, a white male, alleged unfair discrimination based on race following his non-appointment to a position to which he applied, was interviewed and had previously filled in a temporary capacity. The position was filled by a coloured male. The applicant sought an order in terms of s 50 (2) of the Employment Equity Act 55 of 1998 (EEA) compelling the respondent to retrospectively place him in a commensurate position to that of the contested position, alternatively an award of compensation or damages. The respondent argued that the successful candidate was appointed primarily on merit and the successful candidate's race was of secondary importance.

ISSUE OF LAW: Whether the non-appointment of the applicant amounted to unfair discrimination on the basis of race in terms of s 6 of the EEA?

DECISION, RATIO AND OUTCOME (including minority judgment):

The court held that the applicant had not been unfairly discriminated against on the basis of race. It determined that on the facts the successful coloured male had been appointed on merit. In the interview the successful candidate had scored higher than the applicant. In addition the appointment of the successful candidate was in line with the EEA and the employment equity initiatives of the respondent. The court noted the aims and purposes of the EEA and the role of affirmative action in achieving substantive equality.

In dismissing the applicant's arguments it held that the applicant was misdirected in his opinion as to what was "suitably qualified". While the applicant was suitably qualified for the contested position, his notion of suitably qualified was at odds with the EEA (s 20 (3) and (4)). The EE recognizes "the potential or the 'capacity to acquire, within a reasonable time, the ability to do the job.'" The interview panel would have been acting in an acceptable manner had it regarded the potential or the capacity of the successful candidate to perform the job as outweighing the applicant's qualifications. With respect to the applicant's contention that the successful candidate did not meet the threshold criteria of the job, the court determined that such an irregularity would not amount to an act of unfair discrimination based on race. Notably it did not determine whether such irregularity had occurred on the facts. With respect to the applicant's allegation that the successful candidate was not appointed on merit but on the basis of race, the court was satisfied that a racial consideration did play a secondary role in the appointment of the successful candidate. It noted that the successful candidate was competently performing the job and when appointed possessed other attributes that the applicant did not have which the interview panel regarded as significant determining factors. In so far as the appointment of the successful candidate related to his race the court held that it was a legitimate consideration and did not constitute racial discrimination. The role of race in the appointment of the successful candidate advanced the notion of substantive equality in the Constitution, and was consistent with the EEA and the respondent's policies. The court noted that even if the applicant had scored higher than the successful candidate in the interview,

the interview panel would have been justified in assigning greater weight to the successful candidate's potential and in so doing achieving employment equity.

LINK TO FULL DECISION: <http://www.saflii.org.za/za/cases/ZALC/2005/57.html>

LABELS: