



Collaboration Space / UCT Equality Law Database / 1999

DEPARTMENT OF CORRECTIONAL SERVICES v VAN VUUREN

Created by Jenny Erasmus [Administrator], last modified on Jun 25, 2013

YEAR: 1999PLAINTIFF / APPLICANT / APPELLANT: APPELLANT: DEPARTMENT OF CORRECTIONAL SERVICESDEFENDANT / RESPONDENT: RESPONDENT: VAN VUURENCOURT: LABOUR APPEAL COURTCITATION: (1999) 11 BLLR 1132 (LAC)POST / PRIOR ACTION: INDUSTRIAL COURTJUDGE(S): FRONEMAN, CONRADIE, NICHOLSONGROUND(S) OF DISCRIMINATION: RACE, GENDERSTATEMENT OF FACTS:

The respondent was a white female employee of the appellant. She applied for an internal vacancy. Despite being recommended by the interview panel, the Commissioner of Correctional Services (commissioner) directed the appointment of a black male.

The respondent disputed her non-appointment, and proceeded to the then Industrial Court for an order that the appellant's failure to appoint her amounted to an unfair labour practice. The Industrial Court held, that while the conduct of the appellant was not discriminatory, the commissioner's directive to appoint a black, male candidate was flawed. The affirmative action policy of the appellant, on which the commissioner based its decision, had not been formally registered at the time of its directive. This, it held, precluded the commissioner from making a decision based on affirmative action measures.

The respondent appealed the decision of the Industrial Court.

ISSUE OF LAW:

Whether the Commissioner of Correctional Services was permitted to consider affirmative action measures in making appointments in the absence of a registered affirmative action policy?

DECISION, RATIO AND OUTCOME (including minority judgment):

The appeal succeeded.

The court examined the applicable sources of law, namely the Interim Constitution 200 of 1993, the Public Service Act 1994 (PSA), the Correctional Services Act 8 of 1959 and the Public Service Labour Relations Act 1994. It assessed the relevant provisions of such legislation, and their interrelationship. It found that despite the lack of registration of the affirmative action policy, the policy had been negotiated and agreed to through a collective bargaining process. It noted that there was no attack on the actual contents of the policy.

The court held that the commissioner did not act outside its scope. The commissioner had applied a negotiated policy, and its decision did not offend the safeguards within the empowering clause in PSA. The court regarded the commissioner's decision as anticipating the application of the affirmative action policy to the respondent's case. The evidence further reflected that the commissioner had applied his mind to the appointment, and the respondent's circumstances.

LINK TO FULL DECISION: <http://www.saflii.org/za/cases/ZALAC/1999/15.html>

LABELS: