

M FREDERICKS and 47 OTHERS
versus

MEC FOR EDUCATION AND TRAINING, EASTERN CAPE
PERMANENT SECRETARY, EDUCATION,
CULTURE AND SPORT
MINISTER OF EDUCATION

CCT 27/01

JUDGMENT SUMMARY

This judgment concerns the question whether the High Court has jurisdiction to determine certain constitutional complaints raised by the applicants who are all teachers in the employ of the Eastern Cape Department of Education. It became apparent after the amalgamation of various education departments in 1994 that the state had too many teachers in its employ and it needed to reduce their number. In 1996 the Education Labour Relations Council reached an agreement concerning so-called Aright-sizing@ whereby a procedure for voluntary retrenchment of teachers was established. From mid-1996 a large number of teachers applied for and were granted voluntary retrenchment packages. All the applicants, however, who applied for voluntary retrenchment packages only in late 1996 and early 1997, had their applications refused. They then approached the Eastern Cape High Court for an order setting aside the refusal of their applications and an order that the respondents approve their applications for voluntary retrenchment packages. A full bench of the High Court took the view that the matter fell within the terms of section 24 of the Labour Relations Act 1995, in that it concerned the interpretation or application of a collective agreement, and held that it had no jurisdiction over the dispute which had to be dealt with instead by the Commission for Conciliation, Mediation and Arbitration (the CCMA).

The applicants then sought leave to appeal to this Court arguing that the High Court did have jurisdiction to determine the dispute which raised a constitutional matter. In her judgment, O=Regan J for a unanimous court holds that the claim raised by the applicants is based on sections 9 and 33 of the Constitution (the right to equality and the right to administrative justice) and does raise a constitutional matter. She also holds that the dispute raised by the applicants is covered by the provisions of the 1995 Labour Relations Act, although it arose from an agreement concluded in terms of earlier legislation, the Education Labour Relations Act, 1993.

The Court rules that section 24 of the Labour Relations Act cannot exclude the jurisdiction of the High Court to determine constitutional matters. That jurisdiction is entrenched by section 169 of the Constitution and may only be ousted in circumstances where Parliament assigns the determination of the constitutional matter to a court of similar status to a High Court. It is clear that the CCMA is not a court, and certainly not a court of similar status to the High Court. There being no other provision in the Labour Relations Act purporting to assign exclusive jurisdiction in this matter to the Labour

Court, the Constitutional Court concluded that the High Court did have jurisdiction in this case and that the High Court had erred in reaching the opposite conclusion.

The application for leave to appeal was therefore granted and the appeal upheld. The matter was referred back to the High Court to be dealt with in terms of this judgment.