

Phenithi v Minister Of Education and others

Case CCT 35/03

Explanatory Note

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

The applicant, Ms Phenithi, worked for the Department of Education as a teacher in a permanent capacity and was discharged because she was absent from work for more than a month without permission. The Department of Education relied on section 14(1) of the Employment of Educators Act 76 of 1998 which provides that a person in Ms Phenithi's position is "deemed to have been discharged from service on account of misconduct" unless the Department directs otherwise. The reason she gave for her absence was that she was ill. She sought direct access to challenge the constitutionality of the section without first going to the High Court. She said she should be given direct access because of the delay and expense that would result if she first went to the High Court. The Court dismissed the application because the Applicant had given no reasons for the delay of 18 months before she applied to the Court; because there might be factual disputes in the case which would best be decided by the High Court and because the Court was reluctant to decide matters as a court of first and final instance.