CONSTITUTIONALISING THE RIGHT LEGAL REPRESENTATION AT CCMA ARBITRATION PROCEEDINGS: LAW SOCIETY OF THE NORTHERN PROVINCES V MINISTER OF LABOUR 2013 1 SA 468 (GNP)

KJ Selala

SUMMARY

Recently, the issue of legal representation at internal disciplinary hearings and CCMA arbitrations has been a fervent topic of labour law discourse in South Africa. While the courts have consistently accepted the common law principle that there is no absolute right to legal representation at tribunals other than courts of law, a study of recent case law reveals that the majority of court judgments seem to be leaning in favour of granting legal representation at disciplinary hearings and CCMA arbitrations than denying it. In the recent case, Law Society of the Northern Provinces v Minister of Labour, the High Court struck down the rule of the CCMA which restricted legal representation at CCMA arbitration as unconstitutional on grounds of irrationality. The High Court considered that the impugned rule was inconsistent with section 3(3)(a) of the Promotion of Administrative Justice Act, which was specifically enacted to give effect to the right to administrative justice entrenched in the Constitution. In so deciding the High Court considered the importance of job security and the possible loss of job by an employee as a serious matter. This case note aims to analyse critically the court’s judgment in Law Society of the Northern Provinces v Minister of Labour and to consider its implications for dispute resolution in South Africa. It is asserted that although the right to legal representation is not absolute at labour proceedings, in light of the court’s decision in Law Society of the Northern Provinces v Minister of Labour it is not easy to identify the circumstances that would provide justification for the infringement of the right at CCMA arbitrations and probably at disciplinary hearings as well. Here, an argument is made suggesting that the court in the Law Society case has taken the right to legal representation too far.

*Koboro J Selala. BIuris, LLB, LLM (UNIN). Lecturer, School of Undergraduate Studies, Northwest University, Mafikeng Campus. Email: 22013113@nwu.ac.za.*
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