

**IN THE HIGH COURT OF SOUTH AFRICA  
BISHO**

**CASE NO. 1837/05**

In the matter between:

**GEORG SCHMIDT PRIMARY SCHOOL**

**APPLICANT**

and

**THE MEMBER OF THE EXECUTIVE COUNCIL  
THE DEPARTMENT OF EDUCATION,  
EASTERN CAPE PROVINCE**

**RESPONDENT**

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**J U D G M E N T**

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**SANGONI J:**

[1] The applicant is a public school as defined in the South African Schools Act 84 of 1996 (“the Act”)

[2] The respondent is the Member of the Executive Council responsible for education in the Eastern Cape Province.

[3] On 6 June 2002, in the application registered under case no 105/2002, this Court granted an order (“the previous order”) in favour of the applicant against the Head of the Education Department, Eastern Cape Province, cited therein as first respondent and the current respondent cited in the previous application as the second respondent.

[4] The order was granted by consent of all parties. It was incorrectly recorded by the registrar of this Court. For purposes of this application the parties agreed that the correct version of the order should be read as follows:

- “1. That the Respondents restore the Applicant’s status as a school offering grades 1 – 7 and more particularly, to reinstate the Applicant’s curriculum entitlement to grades 6 and 7 with immediate effect;
2. That the Respondents pay the costs of this application jointly and severally, the one paying the other to absolved.”

[5] The relief sought herein is directed at enforcing that previous order. The relevant paragraphs of the order read as follows ;

- “1. Directing that the Respondent’s failure to cause the Eastern Cape Government to comply with the Order granted by this Court on 6 June 2002 in case number 105/2002, in terms of which the Respondent was ordered to restore the Applicant’s status as a school offering Grades 1 to 7 and, more particularly, to reinstate the Applicant’s curriculum

entitlement to Grade 6 and 7 with immediate effect, constitutes an ongoing violation of the Respondent's duties under the Constitution of the Republic of South Africa, 1996.

2. Ordering the Respondent:

2.1 To take all the administrative and other steps necessary to ensure that the Eastern Cape Government complies with the Order aforementioned dated 6 June 2002 in case number 105/2002, within 10 days of this Order; and

2.2 To deliver a report in writing to the Registrar of this Court and to the Applicant's attorneys within 14 days of the date of service of this Order, of the manner and extent of his compliance with the Order granted in sub-paragraph 1 above.

3. Directing that if the Respondent fails to comply with the Order in terms of paragraph 2 above, the Applicant is given leave to supplement its Notice of Motion and Founding Affidavit and to enrol this Application on reasonable notice to the Respondent, for a further hearing on and determination of such complaints of Contempt of Court and/or contraventions of the Public Finance Management Act 1 of 1999 by the Respondent as the Applicant might then advance."

[6] The key words in the previous order that are the subject matter of the current dispute are - "to reinstate the Applicant's curriculum entitlement to grades 6 and 7 with immediate effect."

[7] It is conceded by the applicant that the previous order was complied with in part, the only aspect thereof still outstanding, as far as the applicant is concerned, being the provisioning of posts for additional

educators to the applicant. Both parties are agreed that the so-called outstanding aspect relates to the number of posts and the educators filling them as a consequence of the extension of the applicant's curriculum to grades 6 and 7. At the time of the granting of the previous order the applicant was offering grades 1 to 5 with five educator posts even though there were seven educators. Five of them filled the official educator posts whereas the other two were either "seconded" or "loaned" to the applicant by some schools on the basis of an internal arrangement between the schools involved. The respondent, however, admits having facilitated this loan at the request of the applicant.

[8] It is not in dispute that the curriculum was extended to grades 6 and 7 in consequence of the previous order. At the beginning of the school year immediately following the granting of the order the curriculum was extended to grade 6 and in terms of the official staff establishment the official posts were increased from 5 to 6. For the following school year (2004) grade 7 was introduced and the complement of educators then increased to 7.

[9] In defence the respondent states that the previous order has been complied with even in so far as it relates to the staff complement.

According to the respondent the number of educators is determined by the number of learners at the particular school, the number of posts created by the MEC for the Provincial Department of Education and the latter depending on the availability of funds. This is in accordance with the provisions of section 5 of the Act read with the relevant regulations.

- [10] The central issue for determination in this case is whether the previous order envisaged that the respondent should depart from the norms and standards of the respondent regarding the allocation of posts in order to satisfy what the applicant considers fair and proper. I did not understand the applicant to be taking issue with the educator posts created by the MEC for the Province and that the posts allocated by the Head of the Department in terms section 5(2) of the Act were incorrectly allocated. It has in any event made out no case for consideration in this regard. What it seeks is the provisioning of additional posts and educators which it believes are the ingredients of the curriculum entitlement, referred to in the order, or, the posts and educators that would be necessary for it to cope with the increased grades. Its contention is that the previous order directed that there should be an increase in the staff complement and that common sense dictates that there should be an educator for each grade.

[11] There is a long history of interaction, dating back to 1982\1983, between the applicant and the Department of Education. It is not necessary for purposes of this judgment to refer to details thereof. I will sketch the facts briefly just to put the facts of this case in context. It all started when the Department, as then constituted, requested the applicant to create space at its institution to accommodate an overflow of learners in grades 8 and 9 (standards 6 and 8) from the neighbouring schools, even if meant housing the primary school learners elsewhere. At the time the applicant was offering grades 1 – 7. The arrangement was only for the year 1983.

[12] This led to the applicant discharging some of its primary school learners and in time resulting in the applicant divesting itself of all primary school grades. For a number of years the situation did not revert to normal. In November 1990 the applicant resorted to seeking characterisation of the school as a secondary school. It received no response from the respondent. The applicant was advised in February 1992 that for that year the staff complement was 12 educators. It is not clear from the papers as to when grades 1 to 5 were restored but in August 1996 these were offered by the applicant and the introduction of grade 6 was requested. Because of the low enrolment of learners the applicant was downgraded in October the same year. The

following year (1997) the applicant applied for upgrading. That was refused. In September 2001 the applicant applied for additional posts for grades 6 and 7. Against that background the applicant then brought the application which culminated in the main relief sought therein made a court order by consent.

[13] The difficulty I am confronted with is that the previous order directs 'reinstatement' without any reference to the number of educator posts that have to be reinstated. On the papers there is also no reference to any specific period when the applicant offered grades 1 to 7 and what number of posts it had at the time which should then be reinstated. The contention of the applicant is that it follows that if at the time the order was granted the applicant had 7 educators for 1-5 grades there should at least be two more added, one to serve grade 6 and the other grade 7. Yet, on 7 June 2002 a day after the previous order had been granted, the attorneys for the applicant addressed a letter to the Department stating that grades 6 and 7 required the appointment of 5 further educators.

[14] This approach adopted by the applicant and its attorneys pays no regard to the fact that the number of official posts for the year 2002 was 5 and there had to be a process followed in order to determine the

additional number required, if at all. That can only be determined by applying the norms and standards that are prescribed by the Act, regulations and the Personnel Administration Measures.

[15] The approach by the applicant is tantamount to calling for provisioning of educator posts on arbitrary basis without paying any regard to the legal and policy prescripts. This cannot be read into the previous order as it stands.

In the result I dismiss the application with costs.

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**C T SANGONI**  
**JUDGE OF THE HIGH COURT**

**FORM A**  
**FILING SHEET FOR EASTERN CAPE JUDGMENT**

PARTIES: **GEORG SCHMIDT PRIMARY SCHOOL**      APPLICANT

and

**THE MEMBER OF THE EXECUTIVE COUNCIL**      RESPONDENT  
**THE DEPARTMENT OF EDUCATION,**  
**EASTERN CAPE PROVINCE**

- Registrar CASE NO: **1837/05**
- Magistrate:
- Supreme Court of Appeal/Constitutional Court: **BISHO HIGH COURT**

DATE HEARD: 2 November 2006

DATE DELIVERED: 14 December 2006

JUDGE(S): **SANGONI AJ**

LEGAL REPRESENTATIVES -

*Appearances:*

- for the State/Plaintiff(s)/Applicant(s)/Appellant(s): Adv Collett
- for the accused/defendant(s)/respondent(s): Adv Crisp

*Instructing attorneys:*

- Applicant(s)/Appellant(s): Hutton & Cook
- Respondent(s)/Defendant(s): State Attorney

CASE INFORMATION -

- *Nature of proceedings:*
- *Topic:*