

List of court cases

Appointments:

1. *Douglas High School v Premier, Northern Cape 1999 4 SA 1131 (NK)*

Appointment of educators – Unlawful administrative action by HOD - Decision taken by the HoD was set aside.

2. *Eikendal Primary School and another v WCED and others, (394/09) [2009] ZAWCHC*

Review of decision of HoD not to appoint recommended candidate – decision set aside – HoD lacking proper understanding of scope of his discretion.

3. *FEDSAS v MEC for the Department of Basic Education, Eastern Cape (60/11) [2011] ZAECB*

Filling of vacant temporary educator posts - HoD's failure to fill posts - Unlawful administrative action by HOD - Decision taken by the HOD set aside.

4. *Federasie van Beheerliggame van SA Skole Limpopo v Departement van Onderwys Limpopo (TPD 30801/03) [2003]*

Appointment of educators – Procedure Employment of Educators Act 76 of 1998 – Unlawful administrative action by HoD - Decision taken by the HoD was set aside on review - Respondents did not comply with obligations.

5. *Governing Body of Unity Primary School and another v MEC, Department of Education, Limpopo Province and others (TPD 22179/07) [2007]*

Appointment of principal – Unlawful administrative action by HoD - Decision taken by the HoD set aside - decision was misdirected and not in accordance with the spirit and purport of the Employment of Educators Act.

6. *Hartswater High School and Another v Head of the Department of Education: Northern Cape (765/2006) [2006] ZANCHC*

Appointment of principal – Unlawful administrative action by HoD - Decision taken by the HoD set aside on review. Department failed to provide guidance and leadership.

7. *Head of Department, Department of Education Limpopo Province v Settlers Agricultural High School and Others (CCT36/03) [2003] ZACC 15; 2003 (11) BCLR 1212 (CC)*

Appointment of principal – application for special leave to appeal by HoD - not in the interests of justice for this Court to entertain the appeal.

8. *Hoërskool Marquard en 'n andere v Departementshoof, Departement van Onderwys, Vrystaat en ander Vrystaat Hoë Hof, Bloemfontein (1465/09) [2009] ZAFB*

Appointment of principal – Interviewing procedure - Unlawful administrative action by HoD - Decision taken by the HoD is not one he is entitled to make in terms of any provision applicable to the case. Decision set aside.

9. *Hoërskool Namakwaland and Another v Lid van die Uitvoerende Raad vir Onderwys, Opleiding, Kuns en Kultuur in die Noord-Kaapse Provinsiale Regering en 'n Ander (1241/2001) [2002] ZANCHC*

Filling of posts – HoD's refusal to make appointment – No legal basis for HoD's disregard of SGB recommendation – decision set aside.

10. *Hoërskool Namakwaland and Another v Lid van die Uitvoerende Raad vir Onderwys, Opleiding, Kuns en Kultuur in die Noord-Kaapse Provinsiale Regering and Another (1241/2001) [2003] ZANCHC*

Filling of posts – application for leave to appeal by Respondents- Applicants met requirements prescribed by PAM - No prospects of success in another court.

11. *Kimberley Junior School v The Head of the Northern Cape Education Department (278/08) [2009] ZASCA*

Appointment of principal – Unlawful administrative action by HoD - HoD not authorised by the empowering provision to make an appointment. Decision taken by the HoD set aside.

12. *Laerskool Gaffie Maree and another v MEC for Education, Training, Arts & Culture: Northern Cape Province and others 2002 12 BLLR 1228 (NK)*

Failure to appoint – Head of department declining to appoint person recommended by governing body to principal's post on grounds not permitted by statute – Decision set aside.

13. *Lawson Brown High School v The Member of the Executive Council, Department of Education, Eastern Cape Province and others, South-Eastern Cape Local Division (808/07) [2007] ZAECF*

HoD decides not to appoint recommended candidate – Disregard for the recommendation of the SGB and appointment of Fourth Respondent instead is *ultra vires* – appointment reviewed and set aside.

14. *The Governing Body of Point High School and another v The Head of the Western Cape Education Department and others (584/07) 2008 ZAHHA 48; 2008 5 SA 18 (HHA); 2008 3 All SA 35 (HHA)*

Appointment of principal and deputy-principal – Unlawful administrative action by HoD - Decision taken by the HoD was set aside.

15. Observatory Girls Primary School and another v Head of Department of Education, Gauteng 2003 (4) SA 246 (W) 2003 (4) SA

Appointment of Teachers - Interview procedure - No lawful basis for HoD to withhold appointment – HoD ordered to accept governing body's recommendation.

16. P J Olivier High School and others v The Member of the Executive Council, Department of Education, Eastern Cape Province and others, Eastern Cape Division Bisho, (214/2011) [2011]

Filling of vacant temporary educator posts - HoD's failure to fill posts – Respondents ordered to fill vacant post.

17. Settlers Agricultural High School & another v Head of Department: Department of Education, Limpopo Province & others [2002] JOL 10167 (T)

Appointment of principal- HoD rejected recommendation and appointed the second respondent – Unlawful administrative action by HoD - set aside on review - Leave to appeal refused.

18. The Centre for Child Law and others v The Minister of Basic Education, Eastern Cape High Court: Grahamstown, (1749/2012) [2012] ZAECG

Filling of vacant temporary educator posts - HoD's failure to fill posts – Respondents ordered to fill vacant post - Provincial department failed to provide effective support for administrative processes in schools - Without proper administration in schools, the right of scholars to basic education is threatened.

Admission and Language

19. Christians v Dale College Boys Primary School and Others (37/2012) [2012] ZAECGHC 3; [2012] 2 All SA 224 (ECG)

Refusal to admit learner - Principal administers admission on behalf of the HoD – Conduct of HoD to reverse decision was wrong – Applicant must comply with provisions of SASA

20. Die Laerskool Middelburg en 'n ander v Die Departementshoof: Mpumalanga se Departement van Onderwys en andere [2002] JOL 10351 (T)

Language – Decision by Department to declare school parallel medium – Respondents disregarded administrative directives – best interest of learners paramount.

21. Member of the Executive Council, Eastern Cape Province and Others v Queenstown Girls High School (1041/07) [2007] ZAECHC

Lawfulness of admission policy - Disclosure of past conduct of a prospective learner – policy lawful – Not the responsibility of other officials in the department to second guess principal's decision. Provisions relating to disciplinary record in admission policy not unconstitutional.

22. Governing Body of Mikro Primary School and Another v Western Cape Minister of Education and Others (332/05) [2005] ZAWCHC 14; 2005 (3) SA 504 (C) [2005] 2 All SA 37 (C)

Determination of language policy – Department has no power to determine such policy - Unlawful administrative action by HoD – Direction to principal to admit certain pupils to the second applicant, and to have them taught in the medium of English, is set aside.

23. Head of Department: Mpumalanga Department of Education and another v Hoërskool Ermelo and others 40/09 [2009] ZACC 32

Language - HoD withdrew the powers of the SGB to determine the language policy of the school and adopted a new language policy - HoD acted unlawfully and in breach of the constitutional principle of legality - Decision set aside.

24. Queenstown Girls High School v MEC, Department of Education, Eastern Cape & others 2009 (5) SA 183 (Ck)

Admission – admission refused by school – Department ordered principal to admit child - Department had no right to countermand principal's decision - Directive declared unlawful and set aside.

Other:

25. Bel Porto School Governing Body and others v Premier of the Western Cape Province and another (CCT58/00) [2002] ZACC 2; 2002 (3) SA 265; 2002 (9) BCLR 891

Procedurally unfair administrative action - failure by the WCED to consult with the appellants on the determination of the equity plan infringed the appellants' constitutional rights to administrative justice.

26. Destinata Skool en `n ander v Die Departementshoof: Departement van Onderwys Gauteng en andere (23675/03) [2004] TPD:

Administrative Action - Departmental officials removed certain documents belonging to the school – officials displayed an arrogant attitude towards the school - Officials acted unlawfully and were ordered to return the documents to the school.

27. Diphetocho School Governing Body and others v Department of Education Free State and others (4218/2010) [2012] ZAFB

Administrative Action - Decision by the HoD to withdraw functions of SGB – HoD did not in the circumstances have the power to withdraw the functions – decision set aside.

28. Governing Body of Bopasetjhaba and Others v Premier of the Free State Province and Others (2238/2003) [2005] ZAFSHC

Administrative action - Construction of school buildings – Refusal by Respondents to erect school buildings for the School – legitimate expectations - The decision by second and third respondents or either of them not to erect school buildings rescinded and set aside.

29. Hoërskool Hoopstad en `n ander v Departementshoof: Departement van Onderwys, Provinsie Vrystaat (1608) [2009] ZAFB

Admission- and language policy – Unlawful interference - District-Director instructed principal to ignore school's admission, language and hostel policy and to admit learners contrary to policies - matter settled and court orders interdicting interference by HoD and District-Director obtained by consent.

30. Larbi-Odam and others v MEC for Education (North-West Province) and another (CCT2/97) [1997] ZACC 16; 1997 (12) BCLR 1655; 1998 (1) SA 745

Declaration of invalidity of regulations - *Regulations regarding the Terms and Conditions of Employment of Education* in Government Gazette 16814 GN R1743 of 13 November 1995 declared to be inconsistent with the Constitution and invalid.

31. Maritzburg College v C.R Dlamini N.O and others, Natal Provinsial Division, (2089/2004) [2004]

Suspension of Learners – HoD's rejection of recommendation of suspension and failure to implement expulsion – SGB acted lawfully – HoD's action ignores obligations of the SGB and disregards the rights of the pupils.

32. Nuwe Republiek Skool v Mnguni and others Natal Provincial Division (NPD 4143/03) [2004]

Disciplinary action against principal - Unlawful administrative action by HoD - Decision taken by the HoD was set aside on review.

33. Queens College Boys High School v MEC, Department of Education, Eastern Cape Government (454/08) [2008] ZAECHC 165

Administrative Action - Recommendation of expulsion - Unlawful administrative action - The M.E.C's decision not to accept the expulsion recommendations of the governing body are reviewed and set aside.

34. *Section 27 and Others v Minister of Education and Another (24565/2012)*
[2012] ZAGPPHC 114; [2012] 3 All SA 579 (GNP); 2013 (2) BCLR 237 (GNP);
2013 (2) SA 40 (GNP)

The right to basic education – Department’s failure to provide textbooks is a violation of the right to basic education- Limpopo Department of Education, alternatively Department of Basic Education directed to provide textbooks.

35. *Schoonbee v The MEC for Education, Mpumalanga 2002 4 SA 877 (T)*

Administrative Action - Decision by the HoD to dissolve the SGB and to suspend the principal as well as the Deputy Principal - – Unlawful administrative action by HOD - unlawful disbandment of School Governing Body set aside.

36. *Stutterheim High School v Member of the Executive Council, Department of Education, Eastern Cape Province and others (2586/06)* [2007] ZAECHC 150;
[2009] 4 All SA 364 (E)

Administrative action – Inaction by electoral officer to complete election of SGB – Assumed powers and functions he did not have – Third Respondent directed to complete election.

37. *The Head of the Department: Department of Education, Free State Province v Welkom High School & Harmony High School 766 & 767/2011* 2012 ZAHHA 150 28

Administrative Action – Pregnancy policy – Interference by HoD in execution of school’s pregnancy policy – HoD interdicted – matter pending before this court.

38. *HOër TEGNIESE SKOOL SASOLBURG en ‘n ander v DIE LID VAN DIE UITVOERENDE RAAD VIR ONDERWYS: VRYSTAAT PROVINSIE en andere (FS 1172/2010)*

Administrative action and doctrine of legality – unlawful interference in management of school and illegal confiscation of documents and records – Ordered to return documents and interdicted from unlawful interference in governance and management of school.