ORIGINAL

IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

REPORTABLE

CASE NO.: 14188/2006

In the matter between :

THE GOVERNING BODY OF THE POINT HIGH SCHOOL	First Applicant
POINT HIGH SCHOOL	Second Applicant

and

THE HEAD OF THE WESTERN CAPE EDUCATION DEPARTMENT	First Respondent
JOHAN GEORGE VAN DER MERWE	Second Respondent
JACOBUS JOHANNES SWANEPOEL	Third Respondent
JOHANNES JACOBUS DU TOIT	Fourth Respondent
FERDINAND PIETERSE	Fifth Respondent

JUDGMENT HANDED DOWN ON 21 MAY 2007

DENZIL POTGIETER, A.J.

INTRODUCTION

[1] The principal of The Point High School, Mossel Bay in the Southern Cape became indisposed during 2006 and went on sick leave with effect

from 1 April 2006 until the end of the 2006 academic year whereafter he went into retirement. A deputy-principal of the school, Ms Fourie, also retired at the end of the 2006 academic year. This left both the position of principal and a deputy-principal post vacant at the school.

[2] Second respondent, who was one of the deputy-principals at the time, acted as principal at the school with effect from 1 April 2006, while third respondent who held the post of head of department at the school, acted in the position of deputy-principal in the stead of second respondent.

[3] The present proceedings concern the steps taken by first respondent, the Head of the Western Cape Education Department ("the Department"), to fill the vacancies of principal and deputy-principal with permanent appointments.

[4] After the prescribed process was followed, second respondent was appointed as principal on 12 December 2006 and third respondent as deputy-principal on 27 November 2006.

[5] It is not in serious dispute that first applicant (through its Interview Committee) duly complied with the procedure laid down by the Department for shortlisting, interviewing and assessing the relevant candidates. This entailed the scoring of the candidates in accordance with the provisions of section 6(3) of the Employment of Educators Act No. 76 of 1998 ("the EEA"), the Personnel Administration Measures

(being the collective agreement envisaged by section 6(2) of the EEA) as well as the applicable departmental guidelines. Pursuant to this process three candidates were interviewed and all recommended for the position of principal. Four candidates were interviewed for the position of deputy-principal. Three of these candidates were recommended by first applicant.

[6] The candidates for the position of principal were scored as follows by First Applicant :

6.1 J.J. Du Toit, a male educator of Newcastle High School, an employee of the Kwazulu-Natal Department of Education, scored 118 points;

6.2 J.J. Bester, a male educator of Dundee High School, also an employee of the Kwazulu-Natal Department of Education, scored 108 points; and

6.3 Second respondent scored 86 points.

[7] The recommended candidates for the position of deputy-principal were in turn scored as follows :

7.1 F. Pieterse, a male educator at Wolmeranstad High School, an employee of the North West Department of Education, scored 111 points;

7.2 Third respondent scored 97 points; and

7.3 G.J.J. Swart, a male educator of Klerksdorp High School, scored 82 points.

[8] The abovementioned lists of recommended candidates were duly submitted to First Respondent for further attention.

[9] It is also not in contention that first applicant properly assessed and scored the various candidates having had regard to considerations of employment equity and representivity as required, *inter alia*, by sections 6(3)(b) and 7(1) of the EEA. The assessment process accordingly duly identified fourth and fifth respondents as the most suitable candidates for the positions of principal and deputy-principal respectively at the school.

[10] The present proceedings concern a review of first respondent's decision not to appoint fourth and fifth respondents respectively who were the candidates that scored the highest points in each category as indicated above.

THE APPLICABLE STATUTORY SCHEME

[11] It is a trite proposition that first applicant does not enjoy the power to appoint educators at the school (save in respect of additional posts which is not relevant for present purposes). In this regard section 20(1)(i) of the South African Schools Act 84 of 1996 provides that :

> *"... the governing body of a public school must-*
>
> *(i) recommend to the Head of Department the appointment of educators at the school, subject to the Employment of Educators Act, 1998 (Act 76 of 1998), and the Labour Relations Act, 1995 (Act 66 of 1995)."*

[12] Chapter 3 of the EEA deals with appointments, promotions and transfers (ss6-9 thereof). Section 6(1)(b) thereof provides as follows :

> *"6(1) Subject to the provisions of this section, the appointment of any person, or the promotion or transfer of any educator-*
>
> *(a) ...; or*
>
> *(b) in the service of a provincial department of education shall be made by the Head of Department."*

Section 6(3)(a) provides as follows :

"Subject to paragraph (m), any appointment ... to any post on the educator establishment of a public school ..., may only be made on the recommendation of the governing body of the public school..."

Section 6(3)(c) provides that :

"The governing body ... must submit, in order of preference to the Head of Department, a list of :

(i) at least three names of recommended candidates; or

(ii) fewer than three candidates in consultation with the Head of Department."

[13] In exercising the power to make appointments, first respondent is required by section 6(3)(d) of the EEA to ensure that first applicant has met the requirements of section 6(3)(b) to the effect that the principles of equity, redress and representivity must be complied with. First applicant must also adhere to the requirements set out in paragraphs (i) – (v) of section 6(3)(b) of the EEA. These include *"the democratic values and principles referred to in section 7(1)"* of the EEA.

[14] Section 7(1) of the EEA provides as follows :

"In the making of any appointment or the filling of any post on any educator establishment under this Act due regard shall be had to

equality, equity and the other democratic values and principles which are contemplated in section 195(1) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) and which include the following factors, namely-

(a) the ability of the candidate; and

(b) the need to redress the imbalances of the past in order to achieve broad representation."

[15] Section 195(1) of the Constitution provides, *inter alia*, as following in this regard :

"195. ***Basic values and principles governing public administration-***

(1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

.....

(i) Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation."

[16] Section 6(3)(f) of the EEA provides that *"(d)espite the order of preference in paragraph (c) and subject to paragraph (d), the Head of Department may appoint any suitable candidate on the list."*

THE BASIS OF FIRST RESPONDENT'S DECISION TO APPOINT SECOND AND THIRD RESPONDENTS

[17] On 27 November 2006, first applicant requested reasons from first respondent for the decision not to appoint fifth respondent to the position of deputy-principal. On 4 December 2006, first respondent gave the following reasons for the decision to appoint third instead of fifth respondent :

> *"The Western Cape Education Department (WCED) wishes to emphasise that the nomination was dealt with in terms of section 6.3 of the Employment of Educators Act, 1998, as amended, as well as the relevant Regulations with regard to the filling of advertised posts, with special reference to the Employment Equity Directive issued under Circular 18/2006 of 17 September 2006.*
>
> *As you are aware, there is an over-representation of males at Post Level 3 in the WCED. The appointment of any of the other nominees would not have promoted or improved the EE targets of the WCED, therefore the appointment of Mr Swanepoel was approved."*

[18] In the answering affidavit the issue is expanded upon as follows :

> *"21. ...It is a well-known fact that white and coloured males are over-represented at management level in the education sector. ...*
>
> *22. In relation to the specific case of the appointment of Second and Third Respondents to the posts of Principal and Deputy-Principal at the Second Applicant, respectively, in view of the broader employment equity plan of the WCED, it was obvious that the appointment of a white male candidate from outside the ranks of the WCED in effect would mean adding to an already over-represented group to the establishment whilst the aim is to reduce the numbers of that specific group, i.e. white males. By contrast, should a person from within the ranks of the WCED be appointed, it does not worsen the situation, and in effect it creates another opportunity (where a vacancy now arises) to afford a designated person a chance of appointment, thus promoting equity.*
>
> *In this specific case, should the two nominees from outside the province (Fourth and Fifth Respondent) be appointed, it would add two white males to the WCED profile, and also add to the already skewed equity profile of the school. Should two white males already on the establishment of the*

WCED be appointed however, it would not immediately affect the school's profile, and it would create two vacancies that could potentially be filled by designated persons, and thus promoting equity.

Accordingly, in applying his mind to the matter, the First Respondent took a decision to appoint the Second and Third Respondents thus promoting broader equity in the WCED."

THE GROUNDS OF REVIEW

[19] The grounds of review of first respondent's decision are set out as follows in the founding affidavit :

"77. *The Applicants contend that the decision to appoint Van Der Merwe and Swanepoel, constituted unfair administrative action in one or more of the following respects :*

77.1 The administrative action of the First Respondent was biased, or is reasonably suspected of bias, as contemplated in section 6(2)(iii) of the Promotion of Administrative Justice Act, 3 of 2000 "PAJA";

77.2 *The action was materially influenced by an error of law, as contemplated in section 6(2)(d) of PAJA, since reliance on the provisions of section 6(3)(f) of the EEA to take unfounded and irrational administrative action, is wrong in law;*

77.3 *The administrative action was taken for a reason not authorised by the empowering provision and/or for an ulterior purpose or motive and/or because irrelevant considerations were taken into account or relevant considerations were not considered, as contemplated in sub-paragraphs (i) to (iii) of section 6(2)(e) of PAJA;*

77.4 *The lack of a reason leads to an inference that the real reason is hidden; that the reason cannot be one authorised by statute; that there is an ulterior purpose in taking the decision, and that considerations (unknown or strange to the Applicants) were taken into consideration in making the appointment;*

77.5 *The decision was taken in bad faith (section 6(2)(e)(iv) of PAJA);*

77.6 The administrative action was taken arbitrarily or capriciously (section 6(2)(e)(vi));

77.7 The action is not rationally connected to the purpose for which it was taken and/or the purpose of the empowering provision, as contemplated in section 6(2)(f)(ii) of PAJA;

77.8 The exercise of the power or the performance of the function authorised by the empowering provision, in pursuance of which the administrative action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function (section 6(2)(h) of PAJA).

78. The Applicants also contend that the said administrative action did not have regard to the paramount interest of learners at Second Respondent as contemplated in section 28(2) of the Constitution."

THE BASIS OF THE COURT'S POWER OF REVIEW

[20] In *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs 2004(4) SA 490 (CC)at para [25]*, the Constitutional Court set out the

basis of the court's power of review of administrative action in the following terms :

> *"The cause of action for a judicial review of administrative action now ordinarily arises from PAJA, and not from the common law as in the past. ... The authority of PAJA to ground such causes of action rests squarely on the Constitution."*

[21] The grounds upon which administrative action may be judicially reviewed are set out in section 6 of the Promotion of Administrative Justice Act No. 3 of 2000 ("PAJA").

[22] Section 6 of PAJA provides, in relevant part, as follows :

> *"6. Judicial review of administrative action.-*
>
> ...
>
> *(2) A court or tribunal has the power to judicially review an administrative action if-*
>
> ...
>
> *(f) the action itself-*
>
> *(i) ...*
>
> *(ii) is not rationally connected to-*
>
> *(aa) the purpose for which it was taken;*

(bb) the purpose of the empowering provision;

(cc) the information before the administrator; or

(dd) the reasons given for it by the administrator;

...

(h) the exercise of the power or the performance of the function authorised by the empowering provision, in pursuance of which the administrative action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function;"

[23] The provisions of section 6(2)(f) of PAJA reflect the central importance of rationality as a review threshold of administrative action under the democratic constitutional order. This important principle has been stated variously over time by the highest courts in the country. In *S v Makwanyane 1995(3) SA 391 (CC) at para [156]* Ackermann J. held as follows :

"We have moved from a past characterised by much which are arbitrary and unequal in the operation of the law to a present and a future in a constitutional State where State action must be such

that it is capable of being analysed and justified rationally. The idea of the constitutional State presupposes a system whose operation can be rationally tested against or in terms of the law. Arbitrariness, by its very nature, is dissonant with these core concepts of our new constitutional order."

In a similar vein the Constitutional Court held in *Prinsloo v Van Der Linde & Another 1997(3) SA 1012 (CC) at para [25]* that :

"In regard to mere differentiation the constitutional State is expected to act in a rational manner. It should not regulate in an arbitrary manner or manifest 'naked preferences' that serve no legitimate governmental purpose, for that would be inconsistent with the rule of law and the fundamental premises of the constitutional State."

In the matter of *Pharmaceutical Manufacturers of SA : In re ex parte President of the RSA 2000(2) SA 674 (CC)* the court stated the same principle in the following terms :

"[85] It is a requirement of the rule of law that the exercise of public power by the Executive and other functionaries should not be arbitrary. Decisions must be rationally related to the purpose for which the power was given, otherwise they are in effect arbitrary and inconsistent with

this requirement. It follows that in order to pass constitutional scrutiny the exercise of public power by the Executive and other functionaries must, at least, comply with this requirement. If it does not, it falls short of the standards demanded by our Constitution for such action.

[86] The question whether a decision is rationally related to the purpose for which the power is given calls for an objective enquiry. Otherwise a decision that, viewed objectively, is in fact irrational, might pass muster simply because the person who took it mistakenly and in good faith believed it to be rational. Such a conclusion would place form above substance and undermine an important constitutional principle."

In the matter of *Bel Porto School Governing Body v Premier, Western Cape 2002(3) SA 265 (CC)* the court reiterated the proper approach to the review of administrative action in the following terms :

"[87] The role of the Courts has always been to ensure that the administrative process is conducted fairly and that decisions are taken in accordance with the law and consistently with the requirements of the controlling legislation. If these requirements are met, and if the decision is one that a reasonable authority could make, Courts would not interfere with the decision.

[88] I do not consider that item 23(2)(b) of Schedule 6 have changed this and introduced substantive fairness into our law as a criterion for judging whether administrative action is valid or not.

[89] I do not understand the Carephone *case, or any of the cases that have followed it, to hold otherwise. What they require for a decision to be justifiable, is that it should be a rational decision taken lawfully and directed to a proper purpose."*

In the matter of *Trinity Broadcasting (Ciskei) v Independent Communications Authority of South Africa 2004(3) SA 346 (SCA)* the court reiterated this principle as follows :

"[20] ... As made clear in Bel Porto, *the review threshold is rationality. Again, the test is an objective one, it being immaterial if the functionary acted in the belief, in good faith, that the action was rational. Rationality is, as has been shown above, one of the criteria now laid down in section 6(2)(f)(ii) of the Promotion of Administrative Justice Act. ...*

[21] ... The word 'perversity' may be appropriate (I need express no opinion on the subject) to the standard set by section 6(2)(h) and Wednesbury Corporation *but it has no bearing on the rationality test set by section 6(2)(f)(ii) and*

explained in Pharmaceutical Manufacturers, Bel Porto *and* Carephone. *It is the latter test with which we are concerned in the present case. In the application of that test, the reviewing Court will ask : is there a rational objective basis justifying the connection made by the administrative decision-maker between the material made available and the conclusion arrived at?"*

[24] Insofar as the review ground of reasonableness as set out in section 6(2)(h) of PAJA is concerned, the court held as follows in the *Trinity Broadcasting (Ciskei) v ICA of SA* matter *supra* :

"[20] In requiring reasonable administrative action, the Constitution does not, in my view, intend that such action must, in review proceedings, be tested against the reasonableness of the merits of the action in the same way as in an appeal. In other words, it is not required that the action must be substantively reasonable, in that sense, in order to withstand review. Apart from that being too high a threshold, it would mean that all administrative action would be liable to correction on review if objectively assessed as substantively unreasonable.... Reasonableness can, of course, be a relevant factor, but only where the question is whether the action is so unreasonable that no reasonable person would (sic) *have resorted to it (see section 6(2)(h)."*

[25] In the matter of *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs supra* O'Regan J. held as follows with regard to the proper interpretation of section 6(2)(h) of PAJA :

> *"[44] ... In determining the proper meaning of section 6(2)(h) of PAJA in the light of the overall constitutional obligation upon administrative decision-makers to act 'reasonably', the approach of Lord Cooke provides sound guidance. Even if it may be thought that the language of section 6(2)(h), if taken literally, might set the standard such that a decision would rarely if ever be found unreasonable, that is not the proper constitutional meaning which should be attached to the subsection. The subsection must be construed consistently with the Constitution and in particular section 33 which requires administrative action to be 'reasonable'. Section 6(2)(h) should then be understood to require a simple test, namely that an administrative decision will be reviewable if, in Lord Cooke's words, it is one that a reasonable decision-maker could not reach.*
>
> *[45] What will constitute a reasonable decision will depend on the circumstances of each case, much as what will constitute a fair procedure will depend on the circumstances of each case. Factors relevant to*

determining whether a decision is reasonable or not will include the nature of the decision, the identity and expertise of the decision-maker, the range of factors relevant to the decision, the reasons given for the decision, the nature of the competing interests involved and the impact of the decision on the lives and well-being of those affected. Although the review function of the Court now have a substantive as well as a procedural ingredient, the distinction between appeals and reviews continues to be significant. The Court should take care not to usurp the functions of administrative agencies. Its task is to ensure that the decisions taken by administrative agencies fall within the bounds of reasonableness as required by the Constitution.

....

[48] *In treating the decisions of administrative agencies with appropriate respect, a Court is recognising the proper role of the executive within the Constitution. In doing so a Court should be careful not to attribute to itself superior wisdom in relation to matters entrusted to other branches of government. A Court should thus give due weight to findings of fact and policy decisions made by those with special expertise and experience in the field. The extent to which a Court should give weight to these considerations will depend upon the character of the decision itself, as well*

as on the identity of the decision-maker. A decision that requires an equilibrium to be struck between a range of competing interests or considerations and which is to be taken by a person or institution with a specific expertise in that area must be shown respect by the Courts. Often a power will identify a goal to be achieved, but will not dictate which route should be followed to achieve that goal. In such circumstances a Court should pay due respect to the routes selected by the decision-maker. This does not mean, however, that where the decision is one which will not reasonably result in the achievement of the goal, or which is not reasonably supported on the facts or not reasonable in the light of the reasons given for it, a Court may not review that decision. A Court should not rubber-stamp an unreasonable decision simply because of the complexity of the decision or the identity of the decision-maker."

(emphasis supplied)

EVALUATION

[26] The following appears from the above analysis. Prior to the amendments effected to section 6 of the EEA (with effect from 26 January 2006 by the Education Laws Amendment Act 24 of 2005), first respondent was obliged to make an appointment in accordance with the preference of the school governing body, save in strictly circumscribed

circumstances. It is readily apparent that the effect of the amendment of section 6(3)(f) of the EEA is to afford first respondent a wider discretion in making appointments. He is no longer bound by the preference of the school governing body. However, upon a proper construction of section 6(3)(f) it is readily apparent that first respondent does not enjoy an unfettered discretion in this regard. The discretion to appoint is constrained by the relevant provisions of the EEA, PAJA and the Constitution. Although first respondent is not bound by the preference of the school governing body, he is not at large simply to ignore such preference, but is obliged to give due weight thereto as well as to the assessment of the recommended candidates by the school governing body. In a case such as the present, where there is a significant discrepancy between the assessment results (properly arrived at) of the preferred candidate of the school governing body and the candidate eventually appointed by first respondent, the reasons advanced for such deviation on the part of first respondent are subject to close scrutiny to determine whether the decision is rational and reasonable in accordance with the provisions of PAJA.

[27] In the instant case all of the properly recommended candidates are white males and the eventual appointees have been assessed as being significantly less suitable for appointment than the candidates top-ranked by first applicant. It is apparent from first respondent's reasons for making the appointments of second and third respondents, that he was swayed by perceived considerations of employment equity as reflected,

inter alia, in the Employment Equity Plan of the Western Cape Education Department. The approach adopted by first respondent is that where all of the properly recommended candidates are from an over-represented, previously advantaged group, considerations of employment equity require that preference should be given to existing candidates over candidates from outside of the Province, notwithstanding the fact that the existing employees are properly assessed as being significantly less suitable for appointment. This approach effectively disqualifies the candidates from outside the Province without any consideration of their merit.

[28] First respondent's reasoning for appointing second and third respondents in the circumstances effectively is that this would promote employment equity in that the vacancies left by the appointments of second and third respondents (albeit members of the non-designated group of white males) create the possibility to appoint candidates from the designated groups which would improve the employment equity profile of the school and the education department. This particular approach does not appear to be sanctioned by the relevant Employment Equity Plan relied upon by first respondent. This plan in fact provides as follows :

> *"All appointments will, however, be based on the inherent requirements of the position. However, <u>where an insignificant gap between possible candidates exists in terms of merit/performance, preference will be given to an employee from a</u>*

designated group, should the appointment contribute to the improvement of the representation of specific designated groups."

(emphasis supplied)

[29] It is accordingly apparent that the inherent requirements of the position as well as the issue of merit play a significant role with regard to appointments. This is also reflected, *inter alia*, in the provisions of section 7(1)(a) of the EEA. It is inherent in the above quoted extract from the Employment Equity Plan that it is only in the case of an insignificant gap in the assessment results that merit/performance will not be determinative. Even in the event where preference is given to an employee from a designated group, the Plan provides that the appointment should contribute to the improvement of the representation of specific designated groups. This is in line with the approach set out by the Constitutional Court in the matter of *Minister of Finance & Another v Van Heerden 2004(6) SA 121 (CC) at para [41]*:

"The second question is whether the measure is 'designed to protect or advance' those disadvantaged by unfair discrimination. In essence, the remedial measures are directed at an envisaged future outcome. The future is hard to predict. However, they must be reasonably capable of attaining the desired outcome. If the remedial measures are arbitrary, capricious or display naked preference they could hardly be said to be designed to achieve the constitutionally authorised end. Moreover, if it is clear that

they are not reasonably likely to achieve the end of advancing or benefiting the interests of those who have been disadvantaged by unfair discrimination, they would not constitute measures contemplated by section 9(2)."

(emphasis supplied)

[30] No grounds have been advanced at all by first respondent to support a conclusion that his approach is reasonably capable of attaining employment equity in the indirect sense contended by him. In fact, the approach of first respondent as reflected in his aforesaid reasons for making the appointments in question, is purely speculative. No factual basis has been established at all to conclude that it is reasonably likely that candidates of the designated groups could be appointed to the positions left vacant by second and third respondents. First respondent has simply contented himself with a bald allegation in this regard. This cannot withstand objective scrutiny in the circumstances.

[31] It is in fact irrational in my view to attempt, as first respondent apparently did, to benefit a designated group by making appointments from a non-designated group such as white males, effectively ignoring significant gaps in terms of merit/performance between the relevant candidates and deciding the matter entirely on the basis whether the candidates are existing employees or not. This adherence to a rigid approach undermined the rational exercise of first respondent's discretion in the circumstances. Furthermore, this approach is nowhere sanctioned even

by the Employment Equity Plan relied upon by first respondent. It certainly does not constitute a justifiable reason for overriding the significant discrepancy, properly assessed, between first applicant's preferred candidates and first respondent's appointees. This constitutes the basis for a review of first respondent's appointments in terms of section 6(2)(f) of PAJA.

[32] Moreover, in my view first respondent's actions in ignoring the merits of fourth and fifth respondents and excluding them from consideration solely because they were non-employees, are so unreasonable that no reasonable person could have done so in the circumstances. The appointments of second and third respondents are accordingly also contrary to the provisions of section 6(2)(h) of PAJA and as such unlawful.

[33] A further relevant factor in my view concerns the best interests of the learners as entrenched in section 28(2) of the Constitution (cf. *Saddlers Agricultural High School & Another v Head of Department : Department of Education Limpopo Province & Others [2002] JOL 10167 (T); Grootboom v Oostenberg Municipality & Others 2000(3) BCLR 277 (C) at 288 I-J*). Although all of the recommended candidates are suitable for appointment in a general sense, it cannot in my view be in the best interests of the learners to appoint a candidate who has been properly assessed to be significantly less suitable than some of the other

recommended candidates, in the absence of any justifiable reasons to do so.

CONCLUSION

[34] In the circumstances first respondent's decisions to appoint second and third respondents to the positions of principal and deputy-principal respectively at second applicant cannot stand. They must be reviewed and set aside in terms of section 6(2)(f) and (h) of PAJA.

[35] What remains is to determine a just and equitable remedy in the circumstances. As indicated, the only reason for not appointing first applicant's preferred candidates was first respondent's erroneous belief that it was justified to make an appointment from the ranks of his existing employees in order somehow to advance employment equity. But for this error, it is quite apparent that first respondent, acting rationally and reasonably as required by the provisions of PAJA, would have appointed the candidates who were properly assessed to be best suited for appointment.

[36] It is obviously in the best interests of all parties concerned, that the situation at second applicant should be regularised without any further delay in view of the fact that the academic year has well advanced. Little purpose would accordingly be served by referring the matter back

to first respondent to be dealt with *de novo*. It is accordingly a proper case for the Court to give the necessary directions in this regard.

[37] In the result it is ordered as follows :

(a) The decisions of first respondent to appoint second respondent as principal and third respondent as deputy-principal of the Point High School are reviewed and set aside;

(b) The matter is remitted to first respondent who is directed to appoint fourth respondent as principal and fifth respondent as deputy-principal of the Point High School;

(c) First respondent is ordered to pay the costs of this application, including the cost occasioned by the employment of two counsel.

DENZIL POTGIETER, A.J.