

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

Case Number: 4277/2019

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED: NO

DATE: 15/06/2023

In the matter between:

**THE SOUTH AFRICAN DEMOCRATIC TEACHERS
UNION**

APPLICANT

And

THE MEC FOR EDUCATION, LIMPOPO PROVINCE

1ST RESPONDENT

**THE HEAD OF DEPARTMENT OF HIGHER
EDUCATION LIMPOPO PROVINCE**

2ND RESPONDENT

**THE MINISTER OF HIGHER EDUCATION AND
TRAINING**

3RD RESPONDENT

THE DIRECTOR GENERAL DEPARTMENT OF

4TH RESPONDENT

EDUCATION AND TRAINING

JUDGMENT

MTHIMKULU SS AJ:

[1] The applicant launched an application seeking a declaratory order in the following terms:

- (i) Declaring as unlawful the reduction in the salaries of Community Training and Education College educators who were appointed by the Limpopo Department of Education as at 21 September 2014.
- (ii) Directing the First, Second, Third and Fourth Respondents to reverse the reduction of the salaries of Community Training and Education College educators who were transferred from the Limpopo Department of Education to the Department of Higher Education and Training.
- (iii) Directing the First, Second, Third and Fourth Respondents to pay the affected Community Training and Education College educators whose salaries were reduced in accordance with the prescribed hourly tariff.
- (iv) Directing the Third and Forth Respondents to pay the affected Community Training and Education College Educators whose salaries were reduced in accordance with the prescribed hourly tariff.
- (v) Directing the First, Second, Third and Fourth Respondents to the extent that each is liable to pay affected Community Training and Education educators whose salaries were reduced all monies with interest which constitute the amount of the reduction in their salaries within 30 days hereof.

(vi) Directing that the Second Respondent must lodge proof of the implementation of this order with the applicant's attorneys within five (05) days of the period referred to in 5 above.

(vii) Directing the Respondents to pay the costs of this application.

[2] The respondents brought an application for condonation for the late filing of their answering affidavit. The court having considered the submissions by both counsels found that the respondents have made out a case for the late filing of the answering affidavit, and therefore granted the said condonation application.

[3] This application is brought about by an incident that occurred as at 1 September 2014. The applicants are Community Training and Education educators (herein after referred to as CTE educators), who were appointed by the first and second respondents as at 1 September 2014. The relief sought by the applicants is a review of what the applicants allege is an unlawful reduction in the salaries of the CTE educators who were appointed by the First and Second respondents as at 1 September 2014.

[4] The alleged reduction of salaries of the said educators sought to be declared unlawful, allegedly took place on 1 September 2014. This application was then launched by the applicants on or about 8 July 2019. Approximately five years after the alleged reduction in the salaries of the affected CTE educators.

[5] The educators were appointed by the first and second respondents on a contractual basis and in order for them to be paid, they would complete and submit claim forms. Subsequent to this system of submitting claim forms, the first and second respondents introduced a payroll system (a Persal system) for payment of salaries of these educators. The introduction of the new system resulted in the reduction of salaries of the said educators.

[6] After the persal system was introduced, the third and fourth respondents became successors in law of the first and second respondents as the functions of managing the CTE educators were transferred to them. The educators raised their

concerns about the reduction of their salaries. It is the applicants' submission that the fourth respondent acknowledged that the reduction of salaries was unlawful and undertook to have the issue corrected. The applicants' base this submission on a letter that was addressed to treasury marked **MJM6** in this application. They argue that **MJM6** is a crucial document in support of their application.

[7] It is undisputed that the educators were appointed on a contractual basis and remunerated by the province. It is further not in dispute that there was a reduction of salaries of the said educators as of 1 September 2014. That this reduction of salaries was as a result of the persal system that was introduced to effect payment of the educators.

[8] The relief sought by the applicants against the respondents is an order to declare unlawful the reduction of salaries of CTE educators as at 21 September 2014. In order for the applicants to succeed, this court should find that the respondents took a decision to reduce the salaries of the CTE educators and that the respondents were not legally justified to take such a decision.

[9] The application against the First, Second, Third and Fourth respondent must fail for various reasons. The applicants on the papers have failed to establish a proper case for the relief sought. It is submitted that the respondents did not take any decision to reduce the salaries of the applicants. According to the respondents the salaries were automatically adjusted by the persal system in accordance to what is paid to CTE educators nationally. The applicants themselves aver that the reduction of salaries of the affected educators was prompted by the introduction of the persal system. It can therefore not be said that any administrative action was taken by the respondents which can be reviewed and declared unlawful.

[10] The applicants also rely on a letter that was addressed to treasury by the 4th respondent marked Annexure **MJM6** and argue that it is a crucial document in support of their application as the 4th respondent in this letter unequivocally states that the reduction of the salaries of the educators was unlawful and a gross violation of human rights of these educators. Upon a proper reading of Annexure **MJM6** it becomes clear that this document was a letter to National Treasury to assist in

finding a resolve to the problem. It can therefore not be interpreted or construed as an agreement or an undertaking to pay.

[11] The applicants' claim is founded upon the right to administrative action that is lawful, and procedurally fair, allegedly violated by the respondents. The applicants should have brought a review application in terms of the **Promotion of Administrative Justice Act**¹. In terms of Section 7 (1) (b) of PAJA a review application under PAJA must be instituted within 180 days from the date the applicants became aware of the decision that they are aggrieved by. The applicants failed to institute review proceedings upon becoming aware of the impugned decision.

[12] I am not satisfied that a proper case has been made out by the applicants for the declaratory order and other relief sought. No case is made out on the papers for the orders sought. I agree with the submissions of the First, Second, Third and Fourth respondents' counsel that there is no merit in this application.

[13] It follows that the relief sought against the First, Second, Third and Fourth respondent must fail in its entirety.

Order:

[14] The application against the First, Second, Third and Fourth respondent is dismissed with costs.

SS MTHIMKULU
ACTING JUDGE OF THE HIGH COURT
LIMPOPO DIVISION, POLOKWANE

¹ No. 3 of 2000.

This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be 16h00 on 15 June 2023.

DATE OF HEARING: 09 March 2023

DATE JUDGMENT DELIVERED: 15 June 2023

APPEARANCES:

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