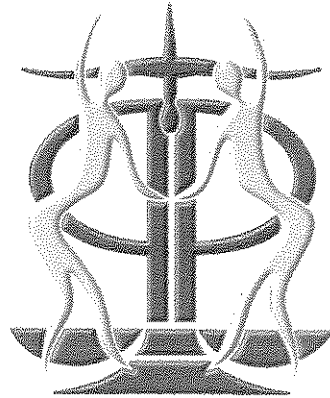


**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION  
182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH  
AFRICA, 1996 AND SECTION 8(1) OF THE PUBLIC PROTECTOR  
ACT, 1994**



**PUBLIC PROTECTOR  
SOUTH AFRICA**

**REPORT NO. 49 OF 2009/10**

**REPORT ON AN INVESTIGATION INTO AN ALLEGATION OF UNDUE  
DELAY IN THE PAYMENT OF LEAVE GRATUITY AFTER RETIREMENT OF  
AN EDUCATOR BY THE GAUTENG PROVINCIAL DEPARTMENT OF  
EDUCATION**

---

INDEX

<b>Executive Summary</b>	<b>3</b>
1. INTRODUCTION	4
2. THE COMPLAINT	4
3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT	5
4. THE INVESTIGATION	5
5. LEGAL FRAMEWORK APPLICABLE TO THE MATTER INVESTIGATED	6
6. CORRESPONDENCE WITH THE GAUTENG DEPARTMENT OF EDUCATION	8
7. FINDINGS	9
8. KEY FINDING	9
9. RESOLUTION	9
10. CONCLUSION	10

---

## Executive Summary

- (i) The Public Protector investigated a complaint received on 10 February 2009 from Mrs. E. van der Hoven (the Complainant) relating to the undue delay by the Gauteng Provincial Department of Education (the GDE) in the payment of her leave gratuity, following her retirement on 31 July 2007.
- (ii) From the investigation it was found that the Complainant was improperly prejudiced by the undue delay of 19 months by the GDE in respect of the payment of the leave gratuity due to her.
- (iii) The Head of the GDE should undertake the following remedial action:
  - (a) Pay interest to the Complainant on the amount paid to her in respect of her leave gratuity calculated on the interest rate as prescribed by Prescribed Rate of Interest Act, 1975, from the date of her retirement; and
- (iv) It is recommended that the Head of the GDE take steps to:
  - (a) Ensure that internal control measures and service delivery indicators of the Directorate Human Resource Administration are improved to guarantee the prompt payment of leave gratuities where an employee leaves the services of the GDE in the future.

---

**REPORT ON AN INVESTIGATION INTO AN ALLEGATION OF UNDUE DELAY IN THE PAYMENT OF LEAVE GRATUITY AFTER RETIREMENT OF AN EDUCATOR BY THE GAUTENG PROVINCIAL DEPARTMENT OF EDUCATION**

**1. INTRODUCTION**

- 1.1 The report is submitted to the Complainant, the Member of the Executive Council responsible for Education in the Gauteng Provincial Government and the Head of the Gauteng Department of Education (GDE), in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).
- 1.2 It relates to an investigation into an allegation of undue delay by the GDE in the payment of the leave gratuity due to Mrs. E van der Hoven, (the Complainant) after her retirement from the Department.

**2. THE COMPLAINT**

- 2.1 The Complainant approached the Public Protector on 10 February 2009, alleging that the GDE had failed to pay the leave gratuity due to her following her retirement from the Department as an educator on 31 July 2007.
- 2.2 Apparently numerous telephone calls were made to the GDE as well as numerous faxes were sent, but to no avail.

### **3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT**

3.1 The institution of the Public Protector was established to enhance constitutional democracy in terms of Chapter 9 of the Constitution. In terms of section 182(1)(a), the Public Protector has the power to investigate complaints of improper conduct in state affairs or the public administration in any sphere of government.

3.2 In terms of section 6(4)(a) of the Public Protector Act, the Public Protector is competent to investigate, on own initiative or on receipt of a complaint, any alleged:

*“(i) maladministration in connection with the affairs of government at any level;*

*(i) undue delay by a person performing a public function;*

*(iii) act or omission by a person in the employ of government at any level, or a person performing a public function, which results in unlawful or improper prejudice to any other person.”*

3.3 As the Complainant alleged that the omission of the GDE officials to effect payment of her leave gratuity resulted in her suffering improper prejudice, the Public Protector has jurisdiction to investigate the matter.

### **4. THE INVESTIGATION**

The investigation was conducted in terms of sections 6 and 7 of the Public Protector Act and comprised:

- 4.1. An assessment of the complaint
- 4.2. Consideration and application of the applicable provisions of:
  - 4.2.1 The Constitution;
  - 4.2.2 Public Service Co-coordinating Bargaining Council (PSCBC) Resolution 7 of 2000;
  - 4.2.3 The Employment of Educators Act, 1998 (the Act); and
- 4.3. Correspondence with the GDE.

## **5. LEGAL FRAMEWORK APPLICABLE TO THE MATTER INVESTIGATED**

### **5.1 The Constitution**

5.1.1 Section 195 of the Constitution describes the basic values and principles governing public administration. Subsection (1) states that "*Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:*

(a) *A high standard of professional ethics must be promoted and maintained.*

(b) *Efficient, economic and effective use of resources must be promoted.*

(c) ...

(d) *Services must be provided impartially, fairly, equitably and without bias.*

(e) ...

(f) *Public administration must be accountable.”*

5.1.2 Section 237 provides that all constitutional obligations has to be performed diligently and without delay.

## **5.2 Public Service Co-coordinating Bargaining Council (PSCBC), Resolution 7 of 2000**

5.2.1 Resolution 7 of 2000 (Resolution 7) of the PSCBC was adopted to improve the service conditions of Public Service employees. Resolution 7 adopted *inter alia* a new policy in respect of annual leave for the Public Service.

5.2.2 Resolution 7 determined that from 1 July 2000 annual leave may not be accrued. Annual leave days had to be utilised within a period of 18 months after it became due.

5.2.3 However, Public Service employees, who in terms of the dispensation applicable prior to 1 July 2000, and who had earned audited leave accruals in terms of that dispensation, retained the accrued leave days. The employer is obliged to pay such accrued leave on death, retirement or medical boarding.

## **5.3 The Employment of Educators Act, 1998**

5.3.1 Resolution 7 of the PSCBC was included in the Act in Chapter J of the Personnel Administrative Measures. Section 5 of Chapter J specifically addresses annual leave accrued prior to 1 July 2000.

5.3.2 The Act clearly states that annual leave accrued prior to 1 July 2000 will be paid on death, retirement (including early retirement), or medical boarding.

## **6. CORRESPONDENCE WITH THE GAUTENG PROVINCIAL DEPARTMENT OF EDUCATION**

6.1 On 10 February 2009, the Public Protector approached the Director: Human Resource Administration (HRA) of the GDE and requested that the alleged non-payment of the leave gratuities of the Complainant be attended to.

6.2 The GDE was also requested to submit reasons for the alleged delay in the payment of leave gratuities to the Complainant.

6.3 The GDE only responded on 13 July 2009 to inform the Public Protector that the leave gratuities were paid to the Complainant on 27 February 2009.

6.4 The Deputy Director: HRA for Tshwane West, further reported that an initial request for the payment of the leave gratuities was completed and submitted to the Head Office of the GDE on 14 August 2008. A copy of the request was made available.

6.5 The Deputy Director: HRA, Tshwane West Region only became aware on 19 January 2009 that payment had not been made after being approached by the Complainant's Labour Union.

## **7. FINDINGS**

7.1 The Complainant retired on 31 July 2007 and the submission for the payment of leave gratuities was only made on 14 August 2008, more than one year after her retirement.

7.2 It is clear that the GDE did not attend to the matter between 14 August 2008 and 19 January 2009 despite numerous faxes and telephone calls from the Complainant.

7.3 The Complainant was paid on 27 February 2009, 19 months after her retirement as an educator.

## **8. KEY FINDING**

From the investigation it was found that the Complainant was improperly prejudiced by the undue delay of 19 months by the GDE in respect of the payment of the leave gratuity due to her.

## **9. RESOLUTION**

### **9.1 REMEDIAL ACTION TO BE TAKEN**

9.1.1 The remedial action to be taken by the Head of the GDE is to:

- (a) Pay interest to the Complainant on the amount paid to her in respect of her leave gratuity calculated on the interest rate as prescribed by Prescribed Rate of Interest Act, 1975, from the date of her retirement; and

### **9.2 RECOMMENDATIONS**

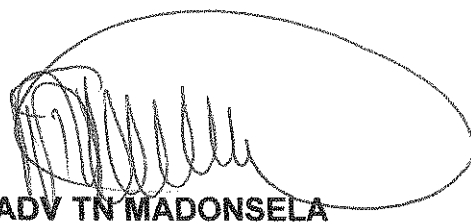
9.2.1 In terms of the provisions of section 182(1)(c) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act, it is recommended that the Head of the GDE take steps to:

- (a) Ensure that internal control measures and service delivery indicators of the Directorate Human Resource Administration are improved to guarantee the prompt payment of leave gratuities where an employee leaves the services of the GDE in the future.

## 10. CONCLUSION

10.1 The GDE must report to the Public Protector on progress in the implementation of the remedial action referred to above, within 30 days of receipt of this report.

10.2 The GDE must report to the Public Protector on the progress in the implementation of the recommendation referred to above, within 90 days of receipt of this report.



**ADV TN MADONSELA**

**PUBLIC PROTECTOR OF THE  
REPUBLIC OF SOUTH AFRICA**

**DATE:** 31/08/2010

Assisted by: Adv E Cilliers (Senior Investigator)