
PUBLIC PROTECTOR
SOUTH AFRICA

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REPORT ON AN INVESTIGATION INTO THE ALLEGED UNDUE DELAY AND REFUSAL BY THE WESTERN CAPE PROVINCIAL DEPARTMENT OF EDUCATION AND CHAPEL STREET PRIMARY SCHOOL IN CAPE TOWN TO REMUNERATE A TEMPORARY EMPLOYEE FOR SERVICES RENDERED
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Executive Summary

(i) The investigation relates to a complaint of alleged undue delay and refusal by the Western Cape Education Department (WCED) and Chapel Street Primary School in Cape Town (the School) to remunerate the complainant for work done on a temporary basis at the School, from 1 March 2006 to 12 June 2006.

(ii) The following key findings were made:

(a) It is found that the School and Governing Body are responsible for remunerating the Complainant for the period from 1 March 2006 to 9 April 2006, at the rate of remuneration as prescribed by the WCED;

(b) It is further found that the Principal and the Governing Body did not follow the correct procedure with regard to the appointment of the Complainant. As a result the Complainant was remunerated at a lower rate and accordingly improperly prejudiced; and

(c) The WCED’s decision not to remunerate the Complainant prior to approval having been obtained (i.e. for 1 March 2006 to 9 April 2006) is found to be in accordance with the law and prescripts.

(iii) It is recommended that:

(a) The Governing Body pays a further amount of R809.45 to the Complainant as outstanding remuneration;

(b) The Head of the WCED formalises by means of a circular the rule that prior approval is obtained before the appointment of substitute or temporary public service staff and that Governing Bodies shall be
responsible for the remuneration of appointments made before approval is granted; and

(c) The Head of the WCED puts measures in place to ensure that future appointments are made within reasonable timeframes and in accordance with applicable prescripts.
REPORT ON AN INVESTIGATION INTO THE ALLEGED UNDUE DELAY AND REFUSAL BY THE WESTERN CAPE PROVINCIAL DEPARTMENT OF EDUCATION AND CHAPEL STREET PRIMARY SCHOOL IN CAPE TOWN TO REMUNERATE A TEMPORARY EMPLOYEE FOR SERVICES RENDERED

1. INTRODUCTION

1.1 This report is submitted to the Head of the Western Cape Education Department (WCED), the Principal of the Chapel Street Primary School in Cape Town (School) and the Chairperson of the Governing Body of the School (Governing Body) in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).

1.2 It relates to an investigation into the alleged undue delay and improper refusal by the WCED and the School to remunerate Mr I S Sylvester (the Complainant) for work done on a temporary basis at the School, from 1 March 2006 to 12 June 2006.

2. THE COMPLAINT

2.1 On 23 March 2007 the Office of the Public Protector (the OPP) received a request from the Complainant to investigate the alleged failure by the WCED to remunerate him for work performed on a temporary basis at the School, for the period 1 March 2006 until 12 June 2006.

2.2 In support of his complaint the Complainant alleged as follows:

2.2.1 From 1 March 2006 to 12 June 2006 he was employed, on a temporary basis, as a cleaner at the School;
2.2.2 He commenced work at the School on the instruction of the Principal of the School, Mr J Alexander;

2.2.3 He was employed because the permanent cleaner was undergoing medical treatment, for an indefinite period, at Lentegeur Hospital, and in terms of which his doctors furnished monthly medical certificates to the School indicating when he would be fit for work again;

2.2.4 The complaint arose when he did not receive remuneration from the WCED for the month of March 2006, May 2006 as well as 1 to 12 June 2006;

2.2.5 The Governing Body gave him a loan of R2000.00, which he was to pay back when the WCED paid him the aforementioned outstanding monies;

2.2.6 He made several telephonic enquiries to the WCED and spoke to various officials, who took down his details and undertook to provide feedback to him, but failed to do so; and

2.2.7 He also approached the Commission for Conciliation, Mediation and Arbitration (CCMA), which referred him to the Department of Labour, which in turn informed him that it does not deal with complaints involving the State. The latter referred him to the Small Claims Court which gave him the same advice.

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

3.1 The institution of the Public Protector was established in terms of Chapter 9 of the Constitution, 1996 and its additional operational requirements are
governed by the Public Protector Act, 1994. The Public Protector was established to strengthen constitutional democracy.

3.2 In terms of Section 182(1) of the Constitution the Public Protector has the power to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice. Following an investigation, the Public Protector can report on that conduct and take appropriate remedial action.

3.3 The complaint accordingly falls within the mandate of the Public Protector.

4. THE INVESTIGATION

4.1 The investigation was conducted in terms of section 6 and 7 of the Public Protector Act, 1994 and comprised:

4.1.1 Assessment of the complaint;

4.1.2 Correspondence with the WCED;

4.1.3 Correspondence with the Principal of the School, including the Chairperson of the Governing Body;

4.1.4 Correspondence with the legal section of the Department of the Premier;
and

4.1.5 Consultation (telephonically and in person) with the School’s Principal and the Chairperson of the Governing Body.
4.2 Consideration of relevant legislation

4.2.1 Public Service Act, 1994, as amended

(i) Section 1 – "Definitions

'establishment' means the posts which have been created for the normal and regular requirements of a department;

'executive authority', in relation to--...

(e) a provincial department or a provincial government component within an Executive Council portfolio, means the member of the Executive Council responsible for such portfolio.

'post' means a post on the establishment for which financial provision exists."

(ii) Section 8 "Composition of public service

(1) The public service shall consist of persons who are employed-
(a) in posts on the establishment of departments; and
(b) Additional to the establishment of departments."

4.2.2 Public Service Regulations, 2001 (Government Notice No. R. 1 of 5 January 2001, as amended)

(i) Part I B Interpretation
"(a) "approved establishment" means the posts that an executing authority has approved to carry out the core and support functions of the department."

(ii) Part III. Section B Strategic Planning

"B.2 Based on the strategic plan of the department, an executing authority shall-

(a) ...

(b) define the posts necessary to perform the relevant functions while remaining within the current budget and medium – term expenditure framework of the department, and the post so defined shall constitute the department’s approved establishment."

(iii) Section F – “Creating and Filling of Posts

Before creating a post for any newly defined job, or filling any vacancy, an executing authority shall-

(a) ...
(b) ...
(c) ...

(d) ensure that sufficient budgeted funds, including funds for the remaining period of the medium–term expenditure framework, are available for filling the post”.

(iv) Section G – “Additional Employment
An executing authority may, within the relevant budget, employ persons additional to the approved establishment where –

(a) the incumbent of a post is expected to be absent for such a period that her or his duties cannot be performed by other personnel; or

(b) ...

(c) it is necessary for any other reason to temporarily increase the staff of the department" (emphasis added).

4.3 Correspondence with the WCED

4.3.1 Information received from the WCED revealed the following:

4.3.1.1 The Principal was given approval per e-mail message, dated 18 April 2006, to appoint a substitute General Assistant for the period 10 April 2006 until 30 April 2006. This was in response to the application or correspondence by the Principal dated 22 March 2006;

4.3.1.2 He was requested to repeat such request for a substitute on a monthly basis until the official on sick leave’s exact period of absence from work could be clarified;

4.3.1.3 Further approval was given for the appointment of a substitute for the period 1 May 2006 to 12 June 2006;

4.3.1.4 According to the WCED’s records the Complainant had been paid for the aforesaid periods against the notch of R34 107.00 per annum;
4.3.1.5 Any periods of employment and remuneration before and after the periods specified in the e-mail were the responsibility of the School;

4.3.1.6 The Complainant was remunerated by the WCED, but instead of paying him from 10 April, he was paid for the full month of April;

4.3.1.7 The WCED deducted the overpayment from the May and June salaries and that is the reason why it appears that the Complainant was only remunerated for May 2006;

4.3.1.8 As far as remunerating the Complainant for March 2006, it was contended that no payment was due by the WCED as he was not employed by the WCED at that time;

4.3.1.9 During 2000 all principals were informed by means of road shows conducted by the WCED that prior approval is required for the appointment of substitute public service staff and that School Governing Bodies would be responsible for the remuneration of appointments made before approval is granted.

4.4. Correspondence and consultation with the Principal and the Governing Body

4.4.1 The investigation revealed that the Principal knew that he had to obtain prior approval from the WCED before allowing the Complainant to commence employment, and that despite this he instructed the Complainant to commence work before such approval was granted.

4.4.2 The OPP further established that the Governing Body paid the Complainant on 20 April 2006 an amount of R500.00 for the period 1 to
9 April 2006, and again later an amount of R2 000.00 for the month of March 2006.

4.4.3 Apparently, these amounts were advanced to the Complainant until he was remunerated for the aforementioned periods by the WCED, and it was agreed that he would repay this money to the Governing Body upon receipt of payment from the WCED.

4.4.4 The Principal and the Governing Body of the School indicated that they did not have any objections in complying with the relevant procedure relating to the appointment of additional staff members. However, they were frustrated by the 'seemingly endless red-tape' at the WCED. In this regard the Principal cited the example of a certain Mr S Allie, in respect of whom he requested prior approval for appointment as a general assistant (cleaner) from 15 October 2008 to 31 December 2008. The appointment was apparently delayed due to the alleged misplacement of documents as too many officials are required to consider and approve a particular appointment, etc.

4.4.5 The Principal further maintained that, apart from the frustration that was experienced due to the delay in finalising the appointment, essential cleaning work was not done, which resulted in the deterioration of hygiene at the school, which posed a health hazard to both learners and staff.

5. OBSERVATIONS AND FINDINGS

5.1 The WCED remunerated the Complainant for the month of April 2006 on 5 May 2006 an amount of R2 800.25, and for the month of May 2006, on 24 August 2006, an amount of R2 999.65.
5.2 The WCED paid the Complainant for the full month of April 2006, instead of paying him from 10 April 2006. The overpayment was deducted from his May and June salaries, which explains why the Complainant was only remunerated for May 2006.

5.3 The legislation mentioned in paragraph 4.2 supra emphasises the importance for a department to remain within the current budget and to ensure that sufficient budgeted funds are available for the filling of posts.

5.4 Persons additional to the approved establishment may be employed (as in the case of the Complainant), provided it is done within the relevant budget.

5.5 It emerged that the Principal and Governing Body would not have the knowledge of how a particular appointment would impact on the WCED's budget, and it is therefore necessary that approval is obtained before allowing an individual to commence employment.

5.6 The WCED informed school principals by means of roadshows held in 2000 that prior approval was required for the appointment of substitute public service staff and that School Governing Bodies would be responsible for the remuneration of appointments made before approval was granted.

5.7 It was found that neither the Principal nor the Governing Body had the authority to make such an appointment on behalf of the WCED.

5.8 Accordingly, the School and Governing Body are responsible for remunerating the Complainant for the period worked prior to approval by the WCED.

5.9 The School and Governing Body should have remunerated the Complainant at the rate of remuneration prescribed by the WCED. It was maintained by
the Principal and Governing Body that the Complainant should be remunerated by the WCED.

5.10 The Complainant was remunerated by the Governing Body at a rate lower than that applicable to the public service. The Complainant should have been remunerated at the salary scale of R34 107 per annum (which would have amounted to R3 309.45 for the period 1 March 2006 to 9 April 2006). The investigation revealed that the Complainant was paid an amount of R2 500.00 by the Governing Body in respect of the aforesaid period.

5.11 Information obtained from the Principal suggests that there might be delays by the WCED with regards to the appointment of additional staff members, which are ascribed to, *inter alia*, cumbersome appointment procedures.

6. KEY FINDINGS

6.1 The School and Governing Body are responsible for remunerating the Complainant for the period 1 March 2006 to 9 April 2006, at the rate of remuneration prescribed by the WCED.

6.2 The Principal and the Governing Body did not follow the correct procedure with regard to the appointment of the Complainant. As a result, the Complainant was remunerated at a lower rate and accordingly improperly prejudiced.

6.3 The WCED’s decision not to remunerate the Complainant prior to approval is found to be in accordance with the law and prescripts.
7. RECOMMENDATIONS

In terms of section 182(1)(c) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act, 1994 it is recommended that:

7.1 The Governing Body pays a further amount of R809.45 to the Complainant as outstanding remuneration;

7.2 The Head of the WCED formalises by means of a circular, the rule that prior approval is obtained before the appointment of substitute or temporary public service staff and that Governing Bodies shall be responsible for the remuneration of appointments made before approval is granted; and

7.3 The Head of the WCED puts measures in place to ensure that future appointments are made within reasonable timeframes and in accordance with applicable prescripts.

8. CONCLUSION

The OPP will monitor the implementation of the recommendations referred to in paragraph 7 on a three-monthly basis.

ADV M L MUSHWANA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 27/07/09

Assisted by: Mrs S Lengeveldt, Investigator, Western Cape Province