
"Allegations of maladministration by the Mpumalanga Department of Education regarding an application for early retirement of Ms. Ntombenhle Gatyeni:

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CLOSING REPORT ON AN INVESTIGATION INTO ALLEGED MALADMINISTRATION BY THE MPUMALANGA DEPARTMENT OF EDUCATION REGARDING AN APPLICATION FOR EARLY RETIREMENT
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Executive Summary

(i) This is my closing report issued 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.

(ii) The report relates to an investigation into allegations of undue delay by the Mpumalanga Department of Education (the Department) to finalise Ms. Ntombenhle Gatyen'i’s (the Complainant) application for early retirement and an improper deduction by the Department of a departmental debt of the Complainant. Furthermore, the investigation also enquired into an alleged undue delay by the Government Pensions Administration Agency (GPAA) to issue a pension benefit quotation as requested by Complainant.

(iii) The Complainant was employed by the Department for a period of twenty-two (22) years with employee number 12093041, at Impelo Primary School and Siphendulwe Primary School (the schools) for the period 1991 to 2000 and 2000 to 2013 respectively.

(iv) In the main, the Complainant alleged that on 13 February 2013, she made an application for early retirement, through the Nkangala District office of the Mpumalanga Department of Education where she requested that her last day of service be on 30 June 2013. She then received a response to her application for early retirement (which application was successful with effect from 30 June 2013) on 05 July 2013. She stated that she continued working during the June/July 2013 school holidays until 14 July 2013, as she had been busy marking scripts of pupils along with fellow teachers.

(v) The Complainant stated that when she received her benefit statement from the GPAA, she noted that an amount had been deducted from her pension benefit,
which amount was reflected as a departmental debt. The said debt, as she was advised, was due to a salary overpayment for the entire month of July 2013, as well as an outstanding tax payment. The Complainant challenged the correctness of the departmental debt on the basis that she continued working up to 14 July 2013 and, as such she said, she was entitled to the salary for the month of July 2013. The Complainant further alleged that the Department did not timeously inform her, three (03) months prior to the effective date of early retirement, of the outcome of her application. On 28 June 2017, the Complainant made further allegations that she was not paid the salary for January and December 1990.

(vi) In response to the allegations of undue delay by the Department to finalise the Complainant's application for early retirement and an improper deduction by the Department of a departmental debt of the Complainant, the Department conceded that the Complainant received the written communication on the outcome of her application on 05 July 2013, however, indicating her last day of service to be 30 June 2013. The Department further stated that it was not wrong in deducting the departmental debt for the entire month of July 2013 from the Complainant's pension.

(vii) On analysis of the complaint, the following issues were considered:

(a) Whether the Department improperly handled the Complainant's application for early retirement;

(b) Whether the Department paid the Complainant's salary for January and December 1990;

(c) Whether the Department improperly deducted a departmental debt from the Complainant's pension benefit entitlement;

(d) Whether the Department unduly delayed in processing the Complainant's termination of service documents to GPAA; and
(e) Whether the GPAA delayed in providing the Complainant with a pension benefit quote;

(viii) A formal investigation was conducted through meetings and interviews with the Complainant and the officials from the Nkangala District office of the Department, as well as an inspection of all the relevant documents and analysis and application of all relevant laws, policies and related prescripts.

(ix) Key laws and policies taken into account to determine if there had been maladministration by the Department and prejudice to the Complainant were principally those imposing administrative standards that should have been complied with by the Department or its officials when processing the application documents for the Complainant’s early retirement. Those are the following:

(a) Section 10 of the Employment of Educators Act, 76 of 1998 read with rule 14.3.3 of the GEP Law, 21 of 1996 which provides for the right of an Educator to go on early retirement;

(b) The notice period to be served by an Educator as regulated under Chapter 4 of the Employment of Educators Act and the Mpumalanga Department of Education Human Resource Directive No. 09 of 2012 which provides for the procedure to be followed when an Educator voluntarily applies for early retirement before reaching the prescribed normal retirement age;

(c) The requirements for deducting a departmental debt relevant herein from a pensioner’s pension benefit as prescribed under section 21(3)(a) of the GEP Law, which provides that upon retirement or discharge of an employee, an employer department is entitled to a deduction of a departmental debt owing by such employee from his or her pension benefit either in a lump sum, or in such instalments as the GPAA Board may determine;
(d) The above deduction ought to follow the provisions of just administrative action as provided for under section 3 of the Promotion of Administrative Justice Act (PAJA), which states that an administrative action which materially and adversely affects the rights or legitimate expectations of any person (in this case the affected party being the employee) must be procedurally fair, which procedure is dependent on the circumstances of each case.

(e) Section 33(1) & (2) of the Constitution, reinforces the above in (c) and (d) by providing that everyone has the right to administrative action that is lawful, reasonable and procedurally fair. Further that everyone, whose rights have been adversely affected by administrative action, has the right to be given written reasons.

(f) The main requirements for fair administrative action in relation to the deduction of departmental debt in terms of the GEP law;

(g) Section 195 of the Constitution which provides that the public administration must be governed by the democratic values and principles enshrined in the Constitution, including but not limited to that of a high standard of professional ethics must be promoted and maintained, give effect to good human resources management practices, provide services as good administration, respond to people’s needs and be accountable.

(h) Principle 7 of the Batho Pele Principles which provides that if the promised standard of service is not delivered, citizens should be offered an apology, a full explanation and a speedy and effective remedy, and when complaints are made, citizens should receive a sympathetic, positive response.

(x) Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I am making the following findings:
(a) Regarding whether the Department improperly handled the Complainant's application for early retirement, I find that:

(aa) The allegation herein is unsubstantiated. The Department's conduct in this regard does not constitute maladministration, as envisaged in section 6(4)(a)(i) of the Public Protector Act, and improper conduct, as envisaged in section 182(1) of the Constitution. Even though the Department had not advised the Complainant that her non-compliant application made in February 2013 would be considered as the correct application (read with the compliant application made on 1 and 29 April 2013), one could therefore accept that the application made in February 2013 was for all intents and purposes, considered as the correct and accepted application herein and that she had served a notice period of 90 days by 30 June 2013.

(b) Regarding whether the Department paid the Complainant's salary for January and December 1990, I find that:

(aa) The allegation herein is unsubstantiated. The records received from the Department during the meeting of 12 July 2017, clearly indicate that the Complainant was not in the employ of the Department during the period January to December 1990.

(bb) The Department's conduct in this regard does not constitute maladministration, as envisaged in section 6(4)(a)(i) of the Public Protector Act, and improper conduct, as envisaged in section 182(1) of the Constitution.

(c) Regarding whether the Department improperly deducted the departmental debt from the Complainant's pension benefit, I find that:
(aa) The allegation herein is unsubstantiated. The Department complied with the provisions of the GEP Law and section 3 of PAJA and notified the Complainant of the overpayment. She was also given an opportunity to acknowledge the said debt, which she did by way of signature on the GPAA acknowledgement of debt form dated 28 August 2013. Furthermore, the Department was not wrong in deducting the departmental debt for the entire month of July 2013 from her pension benefit.

(d) Regarding whether the Department unduly delayed in processing the Complainant’s termination of service documents and in forwarding same to the GPAA, I find that:

(aa) The allegation herein is unsubstantiated. The correct date on which exit documents were received by GPAA is 09 October 2013 and payment was processed by the GPAA on 13 October 2013 and payment was made to on 22 October 2013. To this end, the GPAA benefit letter indicated that the Complainant was entitled to pension from 01 July 2013. Benefits were paid amounting to an arrear pension from the aforesaid date together with interest.

(xi) In the light of the above findings, the complaint is therefore dismissed as unsubstantiated.
CLOSING REPORT ON AN INVESTIGATION INTO ALLEGED MALADMINISTRATION BY THE MPUMALANGA DEPARTMENT OF EDUCATION REGARDING THE COMPLAINANT’S APPLICATION FOR EARLY RETIREMENT.

1. INTRODUCTION

1.1 This is my report issued 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 The report is submitted in terms of section 8(3) of the Public Protector Act to the following people to note the outcome of my investigation:

1.2.1 To Ms NSM Gatyeni, the Complainant, to inform her about the outcome of the Public Protector's investigation.

1.3 A copy of the report is also provided to the Head of Department, Mpumalanga Department of Education, Mrs MOC Mhlabane.

1.4 The report relates to an investigation into allegations of maladministration by the Mpumalanga Department of Education (the Department) regarding Ms. Ntombenhle Gatyeni's (the Complainant) application for early retirement. Furthermore, the investigation also enquired into an alleged undue delay by the Government Pensions Administration Agency (GPAA) to issue a pension benefit quotation as requested by the Complainant.

2. THE COMPLAINT

The complaint was lodged by the Complainant, Ms Ntombenhle Sarah Mavis Gatyeni, on 03 June 2014 alleging that:
2.1 She was employed by the Department for a period of twenty-two (22) years with an employee number 12093041, at Impelo Primary School and Siphendulwe Primary School (the schools) for the period 1991 to 2000 and 2000 to 2013 respectively.

2.2 On 13 February 2013, she made an application for early retirement, through the Nkangala District office. In her application, she requested that her last day of service be on 30 June 2013.

2.3 By mid-March 2013 she had not received a response from the Department and therefore made a follow up with the District office. On 10 April 2013, she was advised that her letter of application for early retirement was inadequate as it did not reflect her comprehension of the penalties that would ensue from early retirement as per the laws regulating the GPAA. Further, on 29 April 2013, she was advised that the letter subsequently submitted did not quote the relevant legislative prescripts of the GPAA that regulate the comprehension of the penalties that would ensue from early retirement.

2.4 On 10 and 29 April 2013, the Complainant re-submitted other applications to the Department and received a response on 05 July 2013. However, she continued working during the June/July 2013 school holidays until 14 July 2013, as she had been busy marking scripts of pupils along with fellow teachers.

2.5 When she received her benefit statement from the GPAA, she noted that an amount had been deducted from her pension benefit, which amount was reflected as a departmental debt. She was advised that the said debt was due to a salary overpayment for the entire month of July 2013, as well as an outstanding tax payment. She challenged the correctness of the departmental debt on the basis that she continued working up to 14 July 2013 and, as such she said, was entitled to the salary for the month of July 2013. She further alleged that the Department
did not timeously inform her, three (03) months prior to the effective date of early retirement, of the outcome of her application.

2.6 Further to the complaint against the Department, the Complainant alleged that, prior to taking the decision to make an application for early retirement, she had requested the GPAA to provide her with a pension benefit quotation which would reflect what her pension entitlement would be between going on either early retirement or resignation, to enable her to make an informed decision between the two. To this end, she alleged as follows:

2.6.1 That the GPAA failed to provide her with the said quotes, which she alleged to have requested in the year 2011, but only received same subsequent to her electing to go on early retirement. The delay by the GPAA allegedly caused her financial prejudice in that she would have elected to resign had she received the quotation timeously.

2.6.2 She further alleged that her pension benefits were paid late by the GPAA, namely only in October 2013, and as a result thereof, she was in arrears in respect of her financial commitments, including that of her house, which was later auctioned by the bank on 07 October 2014.

2.7 On 28 June 2017, the Complainant made the following allegations stating that they were part of the issues in her initial complaint:

2.7.1 That she was not paid her salary for January and December 1990. According to her, she was on study leave for ten (10) months from February to November 1990, however, her salary for the whole year was not paid.

2.7.2 That during 1984 to 1990, a certain amount was deducted from her salary as contribution to a certain pension fund (not GEPF) however, these contributions are not included in her pension pay-out. She failed to mention the name of
pension fund that was deducted from her salary as alleged. She later, on 06 March 2018, clarified the alleged deductions as Unemployment Insurance Fund (UIF) contributions.

2.8 On 02 October 2018, a discretionary letter was sent to the Complainant advising her of my intended findings and affording her an opportunity to provide me with further evidence, failing which I would dismiss the complaint.

2.9 The Complainant responded to the above discretionary letter on 15 October 2018, however, she failed to provide me with further evidence but instead raised further complaints and her dissatisfaction in the manner in which this matter was handled by the Mpumalanga Department of Education.

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

3.1 The Public Protector is an independent constitutional body established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.2 Section 182(1) of the Constitution provides that:

"The Public Protector has the power as regulated by national legislation-

(a) 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;
(b) to report on that conduct; and
(c) to take appropriate remedial action."
3.3 In the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect. The Constitutional Court further held that: "when remedial action is binding, compliance is not optional, whatever the reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequence."

3.4 In the above mentioned Constitutional matter, Mogoeng CJ stated the following, when confirming the powers of the Public Protector:

3.4.1 Complaints are lodged with the Public Protector to cure the incidents of impropriety, prejudice and unlawful enrichment or corruption in government circles (paragraph 65);

3.4.2 An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced (paragraph 67);

3.4.3 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints as the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally empowered to take action that has the effect, if it is the best attempt at curing the root cause of the complaint (paragraph 68);

3.4.4 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard of their nature, context and language, to determine what course to follow (paragraph 69);
3.4.5 Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effects it has on the person, body or institution it addressed to (paragraph 70);

3.4.6 The Public Protector’s power to take remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the subject-matter of investigation and the type of findings made (paragraph 71);

3.4.7 Implicit in the words “take action” is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measures. And “action” presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in the words suggests that she has to leave the exercise of the power to take remedial action to other institutions or that it is the power that is by its nature of no consequence (paragraph 71(a));

3.4.8 She has the power to determine the appropriate remedy and to prescribe the manner of its implementation (paragraph 71(d)); and

3.4.9 “Appropriate” means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case (paragraph 71(e)).

3.5 Section 182(2) directs that the Public Protector has additional powers and functions prescribed by legislation.

3.6 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector is also given power to resolve disputes through
conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.

3.7 The Mpumalanga Department of Education is an institution established in terms of national legislation and its conduct amounts to conduct in state affairs, as a result the matter falls within the ambit of the Public Protector’s mandate.

3.8 The jurisdiction of the Public Protector was not disputed by any of the parties.

4. THE INVESTIGATION

4.1 Methodology

4.1.1 The investigation of the complaint was conducted in terms of section 182 of the Constitution of the Republic of South Africa, 1996 (the Constitution) which gives me the power to investigate alleged or suspected improper or prejudicial conduct in state affairs, to report on that conduct and to take appropriate remedial action, and in terms of section 6(5) of the Public Protector Act, 1994, regulating the manner in which the power conferred by section 182 of the Constitution may be exercised in respect of public entities.

4.1.2 The Public Protector Act confers on me the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration. Section 6 of the Public Protector Act gives me the authority to resolve a matter without conducting an investigation and resolve a complaint through appropriate dispute resolution (ADR) measures such as conciliation, mediation and negotiation.

4.1.3 The complaint was initially classified as an Early Resolution matter capable of resolution by way of a conciliation process or mediation in line with section 6(4)(b) of the Public Protector Act, 1994. However, after several attempts to conciliate the matter, it was escalated into an investigation.
4.2 Approach to the investigation

4.2.1 Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:

- What happened?
- What should have happened?
- Is there a discrepancy between what happened and what should have happened and does that deviation amounts to maladministration?
- In the event of maladministration what would it take to remedy the wrong or to place the Complainant as close as possible to where they would have been but for the maladministration or improper conduct?

4.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether or not the Department unduly delayed to finalise Ms. Ntombenhle Gatyen’s (the Complainant) application for early retirement and an improper deduction by the Department of a debt of the Complainant. Furthermore, the investigation also enquired into an alleged undue delay by the GPAA to issue a pension benefit quotation as requested by Complainant.

4.2.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Department or organ of state to prevent maladministration and prejudice.

4.2.4 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration. Where a Complainant has suffered prejudice the idea is to place him or her as close as possible to where they would have been had the Department or organ of state complied with the regulatory framework setting the applicable standards for good administration.
4.3 On analysis of the complaint, the following were issues considered and investigated:

4.3.1 Whether the Department improperly handled the Complainant’s application for early retirement;

4.3.2 Whether the Department paid the Complainant’s salary for January and December 1990;

4.3.3 Whether the Department improperly deducted a departmental debt from the Complainant’s pension benefit entitlement;

4.3.4 Whether the Department unduly delayed in processing the Complainant’s exit documents to GPAA; and

4.3.5 Whether the GPAA delayed in providing the Complainant with a pension benefit quotation.

4.4 The key sources of information

4.4.1 Documents

4.4.1.1 Copy of the Complainant’s complaint form and supporting documentation;

4.4.1.2 Copy of the letter from GPAA dated, 10 October 2013, advising the Complainant of her payment of the retirement benefit;

4.4.1.3 Copy of the Calculation of the Early Retirement Benefit and copies of the Complainant’s exit documents received from the GPAA on 26 August 2015; and
4.4.1.4 Copy of the Human Resource Directive No. 09 of 2012 of the Mpumalanga Department of Education regarding applications for early retirement before reaching the normal prescribed retirement age;

4.4.2 Interviews and meetings conducted

4.4.2.1 Interview with the Complainant on 04 June 2014;

4.4.2.2 Consultation with the Complainant on 25 August 2014; and

4.4.2.3 Meeting with the Mpumalanga Department of Education, KwaMhlanga District Office, on 24 February 2015 and 12 July 2017.

4.4.3 Correspondence sent and received

4.4.3.1 Copies of correspondences (letters) that were sent to the Complainant by the Mpumalanga Department of Education;

4.4.3.2 Copies of the letters from the Mpumalanga Department of Education responding to the enquiries from the Public Protector; and

4.4.3.3 Copies of email correspondences between the Public Protector, Mpumalanga Department of Education and the Complainant;

4.4.4 Legislation and other prescripts

4.4.4.1 The Constitution of the Republic of South Africa Act, 1996;

4.4.4.2 The Public Protector Act 23 of 1994;

4.4.4.3 Employment of Educators Act, 76 of 1998;
4.4.4.4 Government Employees Pension Law, 21 of 1996;

4.4.4.5 Promotion of Administrative Justice Act 3 of 2000; and

4.4.4.6 Batho Pele Principles

5 THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS

5.1 Regarding whether the Department improperly handled the Complainant's application for early retirement?

*Common cause issues*

5.1.1 It is common that the Complainant applied for early retirement in the year 2013 at the age of fifty-one (51) years. It is further common cause that the Department approved the Complainant's application for early retirement effective 01 July 2013 and that communication to this effect was made to the Complainant on 05 July 2013.

5.1.2 It is not disputed that the Complainant first applied for early retirement in February 2013, but that this application was not accepted by the Department on the basis that it did not reflect her comprehension of the penalty implication on the pension benefit that would flow from such an application. It is also not disputed that in her application she indicated her request that her last day of service be 30 June 2013.
Issues in dispute

5.1.3 It is in dispute whether the Complainant received written communication on the outcome of her application and whether the Complainant served the notice of ninety (90) days prior to going on early retirement.

5.1.4 The Complainant argued that she learnt of the outcome of her application telephonically, on 05 July 2013, when she called the Department to enquire on the status thereof and that she never received any written communication to this effect. Furthermore, the Complainant alluded to having made several follow-up enquiries to the Department regarding the outcome of the application but to no avail. Contrary to the aforementioned, the Department argued that a letter, dated 05 July 2013, entailing the outcome of Complainant’s application was sent to her.

5.1.5 The Complainant further indicated that prior to the approval of her application for early retirement, the Department failed to provide her with such outcome at least three (03) month’s prior to the effective date of early retirement, which period would have served as her notice period.

5.1.6 The Department indicated that, subsequent to informing the Complainant of the lack of compliance on her application made in February 2013, the Department eventually received the correct application on 29 April 2013 wherein the Complainant indicated that she understood the penalties on pension benefits that would arise as a result of such application. The Department further indicated that it did not, however, impose the ninety (90) day notice period on the Complainant as the Complainant’s initial application for early retirement made in February 2013, would have complied with the said period had it not been for its non-compliant contents.
5.1.7 Furthermore, the Department indicated that, on 06 May 2013, an internal memorandum requesting the approval for early retirement of the Complainant was directed to the Head of the Department (the HOD), who approved the memorandum on 24 June 2013. In a letter, dated 05 July 2013, the Department advised the Complainant on the outcome of her application for early retirement which application was successful. The said letter indicated that the Complainant’s application was approved with effect from 01 July 2013 and that the Complainant would receive her last salary on 30 June 2013.

5.1.8 On the Public Protector Complaint form, dated 06 June 2014, the Complainant indicated that she received a letter from the Department on 05 July 2013, which letter indicated the Department’s approval of her application for early retirement. During a telephonic discussion with the Complainant on 29 October 2014 and in subsequent correspondence received from the Complainant thereafter, she indicated that she made a telephone call to the Department on 05 July 2013 to enquire on the status of her application, and that it was on the said date that she was advised telephonically on the outcome of her application. The Complainant had since maintained that she had not received any written communication from the Department on her application, but rather that she was informed telephonically on 05 July 2013 on the outcome of her application.

5.1.9 It was noted that the address to which the letter of approval was sent is that of the school at which the Complainant was employed and not the Complainant’s residential address. However, the Complainant’s first allusion on the complaint form, which form was completed by the Complainant personally, was that she received written communication by way of letter from the Department. It is therefore accepted that the likelihood that the Complainant received written communication stands and that in the absence of the aforementioned, the Complainant nonetheless received communication of same on 05 July 2013.
Application of the relevant law

5.1.10 The right of an Educator to go on early retirement is regulated by section 10 of the Employment of Educators Act, 76 of 1998 read with rule 14.3.3 of the GEP Law, 21 of 1996, as relevant to the case herein. The aforementioned legislative prescripts provide that an Educator may go on retirement when he or she has attained the age of fifty (50), provided that his or her pensions would be reduced by one third of one percent for each completed month between the member's actual date of retirement (i.e. early retirement) and the date of his or her pension retirement date.

5.1.11 The notice period to be served by an Educator is regulated under Chapter 4 of the Employment of Educators Act and the Mpumalanga Department of Education Human Resource Directive No. 09 of 2012 which provides for the procedure to be followed when an educator voluntarily applies for early retirement before reaching the prescribed normal retirement age. In terms of section 10(4)(a)(b) and (c) of the Educators' Employment Act an employee shall give notice of at least three calendar months in writing, to the Head of his/her Department for approval before going on early retirement.

Conclusion

5.1.12 Regarding the notice period, even though the Department had not advised the Complainant that her non-compliant application made in February 2013 would be considered as the correct application (read with the complainant's application made on 10 and 29 April 2013), one could therefore accept that the application made in February 2013 was for all intents and purposes, considered as the correct and accepted application herein and that she had served a notice period of 90 days by 30 June 2013.
5.1.13 Further, as regards whether or not the Complainant received the written communication from the Department, even though the address to which the letter of approval was sent is that of the school at which she was employed and not her residential address, her first allusion on the complaint form that she personally completed was that she received written communication by way of letter from the Department. It is therefore accepted that the likelihood that she received written communication stands and that in the absence of the aforementioned, she nonetheless received communication of same on 05 July 2013.

5.2 Regarding whether the Department did not pay the Complainant's salary of January and December 1990?

_Issues in dispute_

5.2.1 On 28 June 2017, the Complainant stated that her salary of January and December 1990 was not paid by the Department. She indicated that she was on study leave for 10 months from February to November 1990, however, the salary for the whole year was not paid.

5.2.2 On 12 July 2017, the Senior Investigator investigating this complaint held a meeting with the Human Resource Management Unit of KwaMhlanga District Office of the Mpumalanga Department of Education. In the meeting the Department provided documents that clearly show that the Complainant was appointed on a temporary basis on 01 February 1984 and resigned on 31 December 1989. The documents also state that she withdrew her pension funds upon resignation. The Department also clarified that she was not on their system from January 1990 to November 1990 as she had resigned in December 1989.

5.2.3 The Complainant later clarified, on 06 March 2018, when the Senior Investigator gave her feedback that the deductions made on her salary during 1984 to 1990
were contributions for Unemployment Insurance Fund (UIF) and will no longer pursue a complaint for that.

Conclusion

5.2.4 The records received from the Department during the meeting of 12 July 2017, clearly indicate that the Complainant was not in the employ of the Department during the period January to December 1990.

5.3 Regarding whether the Department improperly deducted the departmental debt from the Complainant's pension benefit entitlement?

Common cause issues

5.3.1 It is common cause that the Department requested the GPAA to deduct a departmental debt from the Complainant's pension benefit which debt comprised a salary overpayment and tax, for the month of July 2013. It is further common cause that the schools were closed between 22 June 2013 and 14 July 2013, as per the official school calendar.

Issues in dispute

5.3.2 It is in dispute whether the Complainant worked during the June/July 2013 school holidays until 14 July 2013. Furthermore, it is in dispute whether a fair process was followed in deducting the departmental debt said to be owed by the Complainant.

5.3.3 The Complainant stated that she became aware of the outcome of her application for early retirement on 05 July 2013, but that she continued to work during the June /July 2013 school holidays up until 14 July 2013 as she was marking pupil's scripts, along with fellow Educators. However, no substantive evidence was
provided by her in respect of her allegation of having worked during the aforementioned period. She further stated that she only became aware of the departmental debt when she saw same reflecting as a deduction from her pension benefits, on a benefit statement provided by the GPAA.

5.3.4 Contrary to the above, the Department stated that prior to the recovery process of the departmental debt by the Department, which debt comprised the salary overpayment and tax for July 2013, the Complainant was given an opportunity to acknowledge the said debt, which she did by way of signature on the GPAA acknowledgement of debt form, dated 28 August 2013.

5.3.5 The records received from the school indicate that the school was closed from 22 June 2013 to 14 July 2013 and re-opened on 15 July 2013. Further, the records of the school reflect that the Complainant last signed the school’s “Z8 time book” on 21 June 2013. There were no entries made in the time book between 23 June 2013 and 14 July 2013, and further thereto, the Principal had indicated that only himself (as the then Deputy Principal) and the Principal had the keys to the school.

5.3.6 The Department indicated that the Complainant’s pension was paid with effect from 01 July 2013 with interest and therefore the salary of July 2013 was an overpayment.

5.3.7 It is therefore highly unlikely that the Complainant’s version in respect of working during the school holidays is true and that she was entitled to the salary of the month of July 2013.

*Application of the relevant law*

5.3.8 The requirements for deducting a departmental debt relevant herein from a pensioner’s pension benefit is prescribed under section 21(3) (a) of the GEP Law,
which provides that upon retirement or discharge of an employee, an employer department is entitled to a deduction of a departmental debt owed by such employee from his or her pension benefit either in a lump sum, or in such instalments as the GPAA Board may determine.

5.3.9 The above deduction ought to follow the provisions of just administrative action as provided for under section 3 of Promotion of Administrative Justice Act 3 of 2000 (PAJA), in terms of which the affected party (the employee) whose rights are materially and adversely affected by such action, must be procedurally fair, which procedure is dependent on the circumstances of each case.

5.3.10 The above requirement is also reinforced by section 33(1) & (2) of the Constitution 106 of 1996 (the Constitution), which provides that everyone has the right to administrative action that is lawful, reasonable and procedurally fair. It further provides that everyone, whose rights have been adversely affected by administrative action, has the right to be given written reasons.

5.3.11 In terms of the GEP law the following are the main requirements for fair administrative action in relation to the deduction of departmental debt:

i) The employee must be informed by the employer, of the proposed deduction and the amount thereof;

ii) The employee must be afforded a reasonable opportunity to make representations to the employer and/or the GEPF regarding the deduction;

iii) The employee must be informed of his or her right to make representations directly to the GEPF;

iv) The employer must supply the GEPF with all relevant documents motivating its request for the deduction of the departmental debt;
v) The **employer** must submit to the GEPF its representations and the employee's representations, if any; and

vi) The GEPF must apply its mind independently and decide whether or not to deduct the debt.

**Conclusion**

5.3.12 It is concluded that the Department complied with the provisions of the GEP Law and section 3 of PAJA and notified the Complainant of the overpayment. The Complainant was also given an opportunity to acknowledge the said debt, which she did by way of signature on the GPAA acknowledgment of debt form, dated 28 August 2013.

5.3.13 Furthermore the Department **was not wrong in deducting the departmental debt for the entire month of July 2013 from the Complainant's pension as her pension was paid as from 01 July 2013.**

5.4 **Regarding whether the Department unduly delayed in processing her exit documents and in forwarding same to GPAA?**

**Issues in dispute**

5.4.1 It is in dispute whether the Department unduly delayed in processing the Complainant's exit documents and in forwarding same to the GPAA.

5.4.2 The Complainant stated that the Department delayed in processing her exit documents and that she only received her pension benefits from October 2013, three months after her effective date of retirement. The Complainant further stated that as a result of the delay herein, she was in arrears in respect of
payments for her house, which was eventually auctioned by the bank on 07 October 2014.

5.4.3 In a letter dated 30 October 2014, the Department stated that the Complainant’s exit documents were submitted to the GPAA on 03 October 2013. Further, in a letter dated 23 February 2015, the Department stated that the Complainant’s exit documents were submitted to the GPAA on 06 August 2013.

5.4.4 Records received from the GPAA indicate that the “Notification of withdrawal from Fund” form (Z102 Form) was sent electronically to the GPAA by the Department on 09 October 2013.

5.4.5 Furthermore, the pension payment was processed by the GPAA on 13 October 2013 and payment was made to the Complainant on 22 October 2013. To this end, the GPAA benefit letter that the Complainant provided indicated that she was entitled to pensions from 01 July 2013 and she was paid her arrear pension from the aforesaid date and with interest.

**Application of the relevant law**

5.4.6 Section 26(1) of the GEP Law provides that pension benefits shall be payable within sixty (60) days after the date on which GPAA receives all the duly completed exit documents from the employer department.

**Conclusion**

5.4.7 It is, therefore, concluded that the correct date on which exit documents were received by GPAA is 09 October 2013, and payment was processed by the GPAA on 13 October 2013, and payment was made to the Complainant on 22 October 2013. To this end, the GPAA benefit letter that the Complainant provided
indicated that she was entitled to pensions from 01 July 2013 and she was paid her arrear pension from the aforesaid date with interest.

5.5 Regarding whether the GPAA unduly delayed in providing the Complainant with a pension benefit quote calculation:

Issues in dispute

5.5.1 It is in dispute whether the GPAA timeously provided a quote on pension benefits to the Complainant on either early retirement or resignation.

5.5.2 The Complainant argued that since the year 2011, she requested the GPAA to provide her with a quote on pension benefits payable should she go on early retirement or resign.

5.5.3 During consultation with the Complainant on 25 August 2014, she alleged that sometime in 2012 she requested that the GPAA provide her with a pension benefit quote on the pension entitlement upon retirement as against resignation. She further submitted a benefit statement dated 31 December 2012 from the GPAA, which she stated to have been satisfied with.

5.5.4 During subsequent consultations, she stated that the above information was not provided by the GPAA on time but was later received in October 2013 subsequent to her electing to go on early retirement, which delay by the GPAA caused financial prejudice as she would have elected to resign had the information been received earlier.

5.5.5 She further indicated that on 13 October 2013, the GPAA sent her a benefit letter detailing the pension benefits payable to her by the GPAA, with a date stamped 10 December 2013 by the GPAA’s walk-in centre.
5.5.6 Further on 29 October 2013, she made a request to the GPAA to provide an explanation on how the latter arrived at the pension benefit amount which was paid to her. Same was received by the GPAA on the same date, as reflected by the date stamp of the GPAA’s walk-in centre.

5.5.7 Further, the GPAA provided her with a pension benefit calculation quote for early retirement dated 31 December 2012.

Application of the relevant law

5.5.8 The same standards above required by section 195 of the Constitution in relation to public administration bear relevance herein too. Particularly of relevance is section 195(1)(g) of the Constitution, which demands that good public administration through transparency be fostered by providing the public with timely, accessible and accurate information.

5.5.9 Further to the above, Principle 5 of the Batho Pele principles provides that citizens should be given full accurate information about the public services they are entitled to receive.

Conclusion

5.5.10 It is concluded that this issue against the GPAA could not be substantiated as no evidence was received from the Complainant that she had requested the said pension benefit quote prior to electing to go on early retirement. The letter that she sent as evidence is dated 29 October 2013 and this date was after her application for early retirement and approval thereof.

6. Having regard to the evidence, the regulatory framework determining the standard the Department should have complied with and the impact on the Complainant, I make the following findings:
6.1 Regarding whether the Department improperly handled to Complainant's application for early retirement, I find that:

6.1.1 The allegation herein is unsubstantiated.

6.1.2 Even though the Department had not advised the Complainant that her non-compliant application made in February 2013 would be considered as the correct application (read with the complainant's application submitted 1 and 29 April 2013), one could therefore accept that the application made in February 2013 was for all intents and purposes, considered as the correct and accepted application herein and that she had served a notice period of ninety (90) days by 30 June 2013.

6.1.3 The Department's conduct in this regard does not constitute maladministration, as envisaged in section 6(4) (a) (i) of the Public Protector Act, and improper conduct, as envisaged in section 182(1) of the Constitution.

6.2 Regarding whether the Department did not pay the Complainant's salary for January and December 1990, I find that:

6.2.1 The allegation herein is unsubstantiated.

6.2.2 The records received from the Department during the meeting of 12 July 2017, clearly indicate that the Complainant was not in the employ of the Department during the period January to December 1990.

6.2.3 The Department's conduct in this regard does not constitute maladministration, as envisaged in section 6(4)(a)(i) of the Public Protector Act, and improper conduct, as envisaged in section 182(1) of the Constitution.
6.3 Regarding whether the Department improperly deducted the departmental debt from the Complainant’s pension benefit, I find that:

6.3.1 The allegation herein is unsubstantiated.

6.3.2 The Department complied with the provisions of the GEP Law and section 3 of PAJA and notified the Complainant of the overpayment. She was also given an opportunity to acknowledge the said debt, which she did by way of signature on the GPAA acknowledgement of debt form dated 28 August 2013.

6.3.3 Furthermore the Department was not wrong in deducting the departmental debt for the entire month of July 2013 from her pension benefit.

6.3.4 The Department’s conduct in this regard does not amount to maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.

6.4 Regarding whether the Department unduly delayed in processing the Complainant’s exit documents and in forwarding same to the GPAA, I find that:

6.4.1 The allegation herein is unsubstantiated.

6.4.2 The correct date on which exit documents were received by GPAA is 09 October 2013 and payment was processed by the GPAA on 13 October 2013 and payment was made to on 22 October 2013. To this end, the GPAA benefit letter that the Complainant provided indicated that she was entitled to pension from 01 July 2013 and she was paid her arrear pension from the aforesaid date with interest.
6.4.3 The Department’s conduct in this regard does not amount to maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.

7. CONCLUSION

7.1 The Complainant was afforded an opportunity to provide me with further evidence to substantiate her complaint, on a discretionary letter dated 02 October 2018, advising her of my intended findings, failing which I would dismiss the complaint.

7.2 The Complainant responded to the above discretionary letter, on 15 October 2018. However, she failed to provide me with further evidence, instead raised further complaints and her dissatisfaction in the manner in which this matter was handled by the Mpumalanga Department of Education.

7.3 In view of the above, I dismiss the complaint and the matter is hereby closed.

ADV. BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 25/02/2019