

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE  
CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA AND SECTION 8(2A) OF  
THE PUBLIC PROTECTOR ACT, 1994**



**PUBLIC PROTECTOR  
SOUTH AFRICA**

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***Allegations of improper conduct and maladministration by the Free State Provincial  
Department of Education***

**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT  
AND MALADMINISTRATION BY THE FREE STATE PROVINCIAL DEPARTMENT OF  
EDUCATION RELATING TO THE IMPLEMENTATION OF AN ORDER OF THE  
INDUSTRIAL COURT REINSTATING MR B S NTSHINGILA**



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## **EXECUTIVE SUMMARY**

- (i) This is a report of the Public Protector, issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(2A) of the Public Protector Act, 1994.
- (ii) The report relates to an investigation into allegations of improper conduct and maladministration by the Free State Provincial Department of Education (the Department) pertaining to the implementation of an order of the Industrial Court, issued on 23 April 1998, reinstating Mr Botha Solomon Ntshingila, a former educator.
- (iii) The complaint was lodged on 13 March 2016, by Mr B S Ntshingila (the Complainant).
- (iv) Based on an analysis of the complaint, the following issues were considered and investigated:
  - (a) Whether the Department complied with the order of the Industrial Court issued on 23 April 1998 to reinstate the Complainant on the same terms and conditions that pertained at the time of his dismissal, and if not;
  - (b) Whether the failure of the Department was improper, constitutes maladministration and prejudiced the Complainant.
- (v) The investigation was conducted in terms of section 182(1) of the Constitution and Sections 6 and 7 of the Public Protector Act. It included meetings with the Complainant and officials of the Department, correspondence with the Department, analysis of the documents and information obtained during the investigation and application of the relevant laws, prescripts and jurisprudence.

- (vi) Having considered the evidence and information obtained during the investigation, I make the following findings:
- (a) Regarding whether the Department complied with the order of the Industrial Court issued on 23 April 1998 to reinstate the Complainant on the same terms and conditions that pertained at the time of his dismissal:**
- (aa) The allegation that the Department failed to comply with the order of the Industrial Court made on 23 April 1998 to reinstate the Complainant on the same terms and conditions that pertained at the time of his dismissal, is substantiated.
- (b) Regarding whether the conduct of the Department was improper, constitutes maladministration and prejudiced the Complainant.**
- (aa) The allegation that the conduct of the Department prejudiced the Complainant, is substantiated.
- (bb) The conduct of the Department was improper, as envisaged by section 182(1) of the Constitution and constitutes maladministration, as contemplated by section 6(4)(a)(1) of the Public Protector Act.
- (c) The appropriate remedial action taken by the Public Protector in terms of section 182(1)(c) of the Constitution is the following:**
- (aa) The Head of the Department to:**
- (i) Approach the Government Pensions Administration Agency (GPAA) within 20 business days from the date of this report, to recalculate and pay the pension benefits due to the Complainant, as from the date of his appointment, 8 January 1988, to the date of his retirement, 31 July 2014,

taking into account the pension benefit paid to him upon his dismissal on 15 November 1993, and interest due to him;

- (ii) Ensure that the Department pays to the Government Employees Pension Fund the amount required by the GPAA to recalculate and pay the pension benefits of the Complainant, as stipulated in paragraph (i) above, plus interest, within 30 business days of the GPAA submitting the calculated amounts to the Head of the Department;
- (iii) Ensure that all the other service benefits that the Complainant was entitled to on his reinstatement due to the order issued by the Industrial Court on 23 April 1998, were paid to him, and if not, to effect payment on behalf of the Department to the Complainant of the outstanding amounts, with interest calculated in terms of the Prescribed Rate of Interest Act, 1975, within 30 business days from the date of this report; and
- (iv) Tender a written apology to the Complainant for the prejudice that he suffered due to the failure by the Department to implement the order of the Industrial Court, issued on 23 April 1998.



**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT  
AND MALADMINISTRATION BY THE FREE STATE DEPARTMENT OF EDUCATION  
RELATING TO THE IMPLEMENTATION OF AN ORDER OF THE INDUSTRIAL COURT  
REINSTATING MR B S NTSHINGILA**

**1. INTRODUCTION**

- 1.1 This is my report as the Public Protector, issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(2A) of the Public Protector Act, 1996 (the Public Protector Act).
- 1.2 The Report is submitted in terms of Sections 8(1) and 8(3) of the Public Protector Act to the following officials to inform them of the outcome of my investigation.
  - 1.2.1 The Head of the Free State Provincial Department of Education, Adv T H Malakoane.
- 1.3 A copy of the report is also provided to:
  - 1.3.1 Mr K Sukdev, the Chief Executive Officer of the Government Pensions Administration Agency (GPAA); and
  - 1.3.2 Mr B S Ntshingila, who lodged the complaint.
- 1.4 The report relates to an investigation into allegations of improper conduct and maladministration by the Free State Provincial Department of Education (the Department) relating to the implementation of an order of the Industrial Court, issued on 23 April 1998, reinstating Mr B S Ntshingila, a former employee.

## **2. THE COMPLAINT**

- 2.1 The complaint was lodged on 13 March 2016 at the Phuthaditjhaba Regional Office of the Public Protector South Africa (PPSA), in the Free State Province.
- 2.2 In the main, the Complainant alleged that:
- 2.2.1 He was employed as an Educator by the Department on 8 January 1988 and was unfairly dismissed on 15 November 1993.
- 2.2.2 He challenged his dismissal and ultimately the matter was referred to the then Industrial Court, and a judgment was issued in his favour on 23 April 1998.
- 2.2.3 The Industrial Court ordered the Department to reinstate him on terms no less favourable than those that pertained when he was dismissed and that he should be compensated.
- 2.3 After returning to work, he realised that he was not reinstated as ordered by the Industrial Court, but was re-appointed, apparently to avoid the consequences of reinstatement.
- 2.4 He engaged the Department regarding his reinstatement and the service benefits that he was entitled to, such as pension fund contributions, housing allowance and annual salary increases, on numerous occasions without any success.
- 2.5 Upon his early retirement in July 2014, his pension benefits were only calculated from 23 April 1998, being the date that he was re-appointed (instead of reinstated). He alleged that this resulted in him being prejudiced.

2.6 In essence, the Complainant contended that the Department's failure to comply with the order of the Industrial Court was improper and constituted maladministration.

### 3. POWER AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The Public Protector is an independent constitutional institution, 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 Section 182(2) directs that the Public Protector has additional powers and functions prescribed by national legislation.

3.4 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, advising the complainant regarding appropriate remedies or any other means that may be expedient under the circumstances.

3.5 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<sup>1</sup>. The Constitutional Court further held that: *"When the remedial action is binding, compliance is not optional, whatever 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 consequences"*<sup>2</sup>.

- 3.6. In the above-mentioned matter of the *Economic Freedom Fighters v Speaker of the National Assembly and Others*, Chief Justice Mogoeng stated the following, when confirming the powers of the Public Protector:
- 3.6.1 Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (para 65);
- 3.6.2 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. (para 67);
- 3.6.3 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints. That is 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 that effect, if it is the best attempt at curing the root cause of the complaint (para 68);
- 3.6.4 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 to their nature, context and language, to determine what course to follow (para 69);
- 3.6.5 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

<sup>1</sup> [2016]ZACC 11;2016(3) SA 580(CC) and 2016 (5) BCLR 618 (cc) at para[76].

<sup>2</sup> *Supra* at para[73]

made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to. (para 70);

- 3.6.6 The Public Protector's power to take appropriate 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 (para 71);
- 3.6.7 Implicit in the words "*take action*" is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And "*action*" presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in these words suggests that she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence(para 71(a));
- 3.6.8 She has the power to determine the appropriate remedy and prescribe the manner of its implementation (para 71(d)); and
- 3.6.9 "*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 (para 71(e)).
- 3.7 In the matter of the *President of the Republic of South Africa v Office of the Public Protector and Others* (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP) ; [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December 2017), the court held as follows, when confirming the powers of the Public Protector:
- 3.7.1 The constitutional power is curtailed in the circumstances wherein there is conflict with the obligations under the Constitution (para 71);

- 3.7.2 The Public Protector has the power to take remedial action, which include instructing the President to exercise powers entrusted on him under the Constitution if that is required to remedy the harm in question. (para 82);
- 3.7.3 Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) afford the Public Protector with the following three separate powers ( paragraphs 100 and 101):
- a) Conduct an investigation;
  - b) Report on that conduct; and
  - c) To take remedial action.
- 3.7.4 The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or *prima facie* findings. (para 104);
- 3.7.5 The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court. (Para 105);
- 3.7.6 The fact that there are no firm findings on the wrong doing, does not prohibit the Public Protector from taking remedial action. The Public Protector's observations constitute *prima facie* findings that point to serious misconduct (paragraphs 107 and 108); and
- 3.7.7 *Prima facie* evidence which point to serious misconduct is a sufficient and appropriate basis for the Public protector to take remedial action (paragraph 112 of the judgment).
- 3.8 Regarding the exercise of my discretion in terms of section 6(9) to entertain matters which arose more than two (2) years from the occurrence of the incident, and in deciding what constitute 'special circumstances', some of the special circumstances that I took into account to exercise my discretion favourably to accept this complaint, includes the nature of the complaint and the seriousness of the allegations; whether the outcome could rectify systemic problems in state administration; whether I would

be able to successfully investigate the matter with due consideration to the availability of evidence and / or records relating to the incident(s); whether there are any competent alternative remedies available to the Complainant and the overall impact of the investigation; whether the prejudice suffered by the complainant persists; whether my refusal to investigate perpetuates the violation of section 195 of Constitution; whether my remedial action will redress the imbalances of the past. What constitute 'special circumstances' depends on the merits of each case.

- 3.9 The Department is an organ of state and its conduct amounts to conduct in state affairs, as a result the matter falls within the ambit of the Public Protector's mandate.
- 3.10 The jurisdiction of the Public Protector to investigate this matter was not disputed by the parties.

## **4. THE INVESTIGATION**

### **4.1 Methodology**

- 4.1.1 The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.
- 4.1.2 The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

### **4.2 Approach to investigation**

- 4.2.1 The investigation was approached by using an enquiry process that seeks to find out:
- 4.2.1.1 What happened?
  - 4.2.1.2 What should have happened?
  - 4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation constitutes improper conduct or maladministration?

4.2.1.4 In the event of improper conduct or maladministration, what would it take to remedy the wrong and what action should be taken?

4.2.1.5 The question regarding what happened is resolved through a factual enquiry relying on evidence provided by the parties and independently sourced during the investigation. In this case, the factual enquiry principally focused on whether the Department complied with the order of the Industrial court issued on 23 April 1998 to reinstate the Complainant on the same terms and conditions that pertained at the time of his dismissal.

4.2.1.6 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 to prevent maladministration or prejudice.

4.2.1.7 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct and/or maladministration. Where a complainant has suffered prejudice, the idea is to place him or her as close as possible to where he/she would have been, had the Department complied with the applicable standards for good administration.

**4.2 On an analysis of the complaint, the following issues were considered and investigated:**

4.2.1 Whether the Department complied with the order of the Industrial Court issued on 23 April 1998 to reinstate the Complainant on the same terms and conditions that pertained at the time of his dismissal, and if not;

4.2.2 Whether the failure of the Department was improper, constitutes maladministration and prejudiced the Complainant.

**4.3 KEY SOURCES OF INFORMATION**

**4.3.1 Documents**

4.4.1.1 A copy of the judgement issued by Industrial Court, dated 23 April 1998.

4.4.1.2 Copy of a response from the Department to a grievance lodged by Complainant, dated 10 August 2016.

4.4.1.3 Copies of letters addressed to the Complainant by the Department, dated 13 April 1994, 24 January 2017 and 10 July 2017.

#### **4.3.2 Interviews/meetings conducted**

4.3.2.1 Meeting with the Human Resource Officer of the Department at the Thabo Mofutsanyane District Offices, on 13 March 2015.

4.3.2.2 Meetings with the Complainant held on 16 March 2015; 03 June 2015, 19 April 2016, 11 August 2016, 11 November 2016, 08 March 2017, and 19 June 2017.

4.3.3 Correspondence exchanged between the Public Protector and the Department, dated 12 March 2015 and 21 April 2017.

#### **4.3.4 Legislation and other prescripts**

4.3.4.1 The Constitution of Republic of South Africa, 1996

4.3.4.2 The Public Protector Act, No 23 of 1994

4.3.4.3 Labour Relations Act, No 66 of 1995

#### **4.3.5 Case law considered**

4.3.5.1 *Economic Freedom Fighters V Speaker of the National Assembly and Others: Democratic Alliance V Speaker of the National Assembly and others [2016] ZACC11; 2016(3) SA580 (CC) and 016(16) BCLR618 (CC) at para [76].*

4.3.5.2 *E Ndlovu V Coca Cola SA (PTY) LTD, (Unreported Labour Court Judgment case number: D813/2011).*

4.3.5.3 *Edgars consolidated LTD V Clarke & others [2007] JOL 20678 (LC).*

**4.3.5.4 SBV Services (PTY) LTD V NBCRFLI and others (JR 3103/12)(2015)  
ZALCJHB 374;(2016) 37 ILJ 708 (LC).**

**4.3.6 Notice in terms of section 7(9) of the Public Protector Act**

4.3.6.1 A notice was issued to the Head of the Department in terms of section 7(9) of the Public Protector Act on 5 March 2019, affording him an opportunity to respond to the evidence obtained during the investigation that implicates the Department. No response was received.

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

**5.1 Regarding whether the Department complied with the order of the Industrial Court issued on 23 April 1998 to reinstate the Complainant on the same terms and conditions that pertained at the time of his dismissal.**

**Common cause or Undisputed facts**

5.1.1 It is not in dispute that the Department dismissed the Complainant on 15 November 1993 and that his pension benefits were paid to him by the GPAA due to the termination of his service.

5.1.2 It is further common cause that the Complainant contested his dismissal, obtained a judgment in his favour in the Industrial Court on 23 April 1998 and that his reinstatement was ordered.

5.1.3 The relevant part of the Court Order reads as follows:



*"(c) The Applicant (the Complainant) is hereby reinstated in his employment on conditions no less favourable than those that pertained at the time of his dismissal.*

*(d) Respondent (the Department) is further ordered to compensate applicant in the amount of R21 160 (twenty one thousand one hundred and sixty rand) which I consider to be fair and reasonable under the circumstances and*

*calculated as 5 (five months) of his salary of R4 232 9 (four thousand, two hundred and thirty-two rands) (sic) per month.*

5.1.4 The Department paid an amount of R21 160 to the Complainant as compensation, in terms of the court order.

5.1.5 It is common cause that the pension benefits paid to the Complainant on his retirement amounted to less than he would have received, had his benefits been calculated without any break in his service.

Issues in dispute

5.1.6 The Complainant contended that he was reappointed by the Department, instead of reinstated with all his benefits. The Department failed to pay his pension contributions to the Government Employees Pension Fund(GEPF) from the date of his dismissal to the date that the reinstatement order was made.

5.1.7 According to the records of the GPAA, the Complainant was readmitted to the Government Employees Pension Fund (GEPF) on 23 April 1998.

5.1.8 In its response to the complaint, the Department stated that the Complainant was reinstated in terms of the order of the Industrial Court and his date of appointment amended to include the entire period of his service.

5.1.9 Furthermore, the Department stated that the Complainant was compensated for a period of five months, as per the court order.



- 5.1.10 No contributions were made to the GEPF for the period 16 November 1993 to 22 April 1998, as the Complainant was not working during this time, due to his dismissal.
- 5.1.11 When the Complainant retired on 31 July 2014, his pension benefits were accordingly calculated from 23 April 1998 to 31 July 2014 and not from his date of appointment, 8 January 1988. This had a negative impact on the pension benefits paid to him on retirement.
- 5.1.12 No evidence or information was submitted indicating that all the Complainant's other service benefits were reinstated.

Application of the relevant law

- 5.1.13 Section 193(1) of the Labour Relations Act, 1995 provides that if the Labour Court finds that a dismissal is unfair, the Court may order the employer to reinstate the employee from any date not earlier than the date of dismissal. The Industrial Court had the status of a High Court at the time the order of reinstatement and compensation was made.
- 5.1.14 In the case of *E Ndlovu v Coca-Cola SA (Pty) Ltd*, (unreported Labour Court judgement case number: D813/2011) it was held that upon reinstatement:

*"The employment contract continues as if it had never been interrupted. This meant that a reinstated employee is entitled to remuneration and benefits he or she would have received had the employee been available to work during the period between the unfair dismissal and the reinstatement, which is a continuation of the original contract. The forced absence of the employee is not an automatic exclusion from any benefits to which an employee is entitled in terms of the employment contract or company policy".*

5.1.15 In the matter of *Edgars Consolidated LTD V Clarke & others* [2007] JOL 20678 (LC) the Labour Court found that:

*"The effect of reinstatement is that the employee is treated as if he were never dismissed in the first place. He is placed in the position he would have been in had the dismissal not occurred in the first place. That means all remuneration, pension contribution by the employer to which he was entitled during the period of his dismissal must be repaid to him".*

5.1.16 In the *SBV Services (Pty) Ltd v NBCRFLI and Others* (JR3103/12) (2015)ZALCJHB 374; (2016) 37 ILJ 708 (LC), the Court made it clear that reinstatement means that the employee will be entitled to resume employment, and in addition he/she has become entitled to his/her wages and other money that he/she would have been paid during the period of his/her unfair dismissal". (emphasis added)

5.1.17 Section 195 of the Labour Relations Act, 1995 further provides that *"an order or award of compensation made in terms of this Chapter is in addition to, and not a substitute for, any other amount to which the employee is entitled in terms of any law, collective agreement or contract of employment."*

5.1.18 Accordingly, the arrears in pension contributions of the Complainant were automatically due from the date of his reinstatement even if it was not specified as such in the reinstatement order because contributions form part of remuneration and all back pay is contractually payable.

### Conclusion

5.1.19 In terms of the Industrial Court order reinstating the Complainant on 23 April 1998, the Department had to treat the complainant as if he were never dismissed. This means that the pension contributions due to the GEPF and all his other service benefits had to be paid, as if there were no break in his service.

5.1.20 The Department conceded that no contributions were paid to the GEPF for the period that the Complainant was dismissed, i.e. 16 November 1993 to 22 April 1998, and that only the amount of compensation ordered, was paid to him.

5.1.21 The Department, therefore, failed to comply with the order of the Industrial Court.

**5.2 Regarding whether the failure of the Department was improper, constitutes maladministration and prejudiced the Complainant.**

Common cause or undisputed facts

5.2.1 The Department made no pension contributions in respect of the Complainant during the period that he was dismissed, from 16 November 1993 to 22 April 1998.

5.2.2 As a result, upon his retirement, the Complainant's pension benefits were calculated only from 23 April 1998 to 31 July 2014 and not from his date of employment, 8 January 1988 resulting in him being prejudiced.

5.2.3 The Department could not submit any indication that the other service benefits to which the Complainant was entitled to, were paid to him.

Application of the relevant law

5.2.4 Section 193(1) of the Labour Relations Act, 1995 provides that if the Labour Court finds that a dismissal is unfair, the Court may order the employer to reinstate the employee from any date not earlier than the date of dismissal.

5.2.5 The Labour Court has held on several occasions (as referred to above) that an order of reinstatement means that the employee is to be treated as if he were never dismissed in the first place. He is to be placed in the position he would have been in, had the dismissal not occurred. That means all remuneration and pension

contributions by the employer to which he was entitled during the period of his dismissal, must be repaid to him.

### Conclusion

- 5.2.6 The Department's failure to comply with the order of the Industrial Court, as referred to in paragraph 5.1 above, prejudiced the complainant in the calculation of his pension benefits, when he retired on 31 July 2014.
- 5.2.7 The conduct of the Department was improper and constitutes maladministration.

## **6. FINDINGS**

- 6.1 Regarding whether the Department complied with the order of the Industrial Court issued on 23 April 1998 to reinstate the Complainant on the same terms and conditions that pertained at the time of his dismissal.**
- 6.1.1 The allegation that the Department failed to comply with the order of the Industrial Court made on 23 April 1998 to reinstate the Complainant on the same terms and conditions that pertained at the time of his dismissal, is substantiated.
- 6.2 Regarding whether the conduct of the Department was improper, constitutes maladministration and prejudiced the Complainant.**
- 6.2.1 The allegation that the conduct of the Department prejudiced the Complainant, is substantiated.
- 6.2.2 The conduct of the Department was improper, as envisaged by section 182(1) of the Constitution and constitutes maladministration, as contemplated by section 6(4)(a)(1) of the Public Protector Act.

## **7. REMEDIAL ACTION**

The appropriate remedial action that I am taking in terms of section 182(1)(c) of the Constitution is the following;

### **7.1 The Head of the Department to:**

- 7.1.1 Approach the GPAA within 20 business days from the date of this report, to recalculate and pay the pension benefits due to the Complainant, as from the date his appointment, 8 January 1988, to the date of his retirement, 31 July 2014, taking into account the pension benefits paid to him upon his dismissal on 15 November 1993, and interest due to him;
- 7.1.2 Ensure that the Department pays to the GEPF the amount required by the GPAA to recalculate and pay the pension benefits of the Complainant, as stipulated in paragraph 7.1.1 above, plus interest, within 30 business days of the GPAA submitting the calculated amounts to the Head of the Department;
- 7.1.3 Ensure that all the other service benefits that the Complainant was entitled to on his reinstatement due to the order issued by the Industrial Court on 23 April 1998, were paid to him, and if not, to effect payment on behalf of the Department to the complainant of the outstanding amounts with interest calculated in terms of the Prescribed Rate of Interest Act, 1975, within 30 business days from the date of this report; and
- 7.1.4 Within ten (10) working days , tender a written apology to the Complainant for the prejudice that he suffered due to the failure by the Department to implement the order of the Industrial Court, issued on 23 April 1998.

## 8. MONITORING

- 8.1 The Head of the Department to submit an action plan to me within 30 days from the date of this report, indicating how the remedial action referred to in paragraph 7 above will be implemented.
- 8.2 The implementation of the remedial action to be concluded within 60 business days from the date of this report.



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**ADV. BUSISIWE MKHWEBANE**  
**PUBLIC PROTECTOR**  
**OF THE REPUBLIC OF SOUTH AFRICA**  
DATE: 10/04/2019