

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



**PUBLIC PROTECTOR  
SOUTH AFRICA**

**Report 3 of 2019/2020  
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***Allegations of improper conduct and maladministration by the Department of  
Correctional Services***

**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND  
MALADMINISTRATION BY THE DEPARTMENT OF CORRECTIONAL SERVICES  
RELATING TO THE REINSTATEMENT OF A FORMER EMPLOYEE, MR T A SETLAI AND  
THE PAYMENT OF HIS PENSION BENEFITS**

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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 (the Public Protector Act).
- (ii) The report relates to an investigation into allegations of improper conduct and maladministration by the Department of Correctional Services (Department) relating to the reinstatement of a former employee, Mr T A Setlai (Complainant) and the payment of his pension benefits. The complaint was lodged on 4 December 2013.
- (iii) Based on an analysis of the complaint, the following issues were identified and investigated:
  - (a) Whether the Department failed to fully implement the Arbitration Award issued by the General Public Service Sector Bargaining Council (GPSSBC) in favour of the Complainant on 22 February 2007, and if so
  - (b) Whether the conduct of the Department was improper, constituted maladministration and prejudiced the Complainant.
- (iv) 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.
- (v) Having considered the evidence obtained during the investigation against the relevant regulatory framework, the Public Protector makes the following findings:

**(a) Regarding whether the Department failed to fully implement the Arbitration Award issued by the GPSSBC in favour of the Complainant on 22 February 2007**

(aa) The allegation that the Department failed to fully implement the Arbitration Award issued by the GPSSBC in favour of the Complainant on 22 February 2007, is substantiated.

**(b) Regarding whether the conduct of the Department was improper, constituted 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 in section 182(1) of the Constitution and constitutes maladministration, as envisaged in section 6(4)(a)(i) 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) National Commissioner of Correctional Services to:**

(i) 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 of his appointment, 5 July 1972, to the date of his retirement, 30 June 2013, taking into account the pension benefits paid to him upon his dismissal in June 2006, and interest due to him;

- (ii) 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 (i) above, plus interest, within 30 business days of the GPAA submitting the calculated amounts to the National Commissioner; and
  
- (iii) Within fourteen (14) working days of issuing this report, tender a written apology to the Complainant for the prejudice that he suffered due to the failure by the Department to implement the Arbitration Award issued by the GPSSBC on 22 February 2007.

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**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND  
MALADMINISTRATION BY THE DEPARTMENT OF CORRECTIONAL SERVICES  
RELATING TO THE REINSTATEMENT OF A FORMER EMPLOYEE, MR T A SETLAI AND  
THE PAYMENT OF HIS PENSION BENEFITS**

**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, 1994 (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 National Commissioner of the Department of Correctional Services, Mr A Frazer.

1.2.2 The Chief Executive Officer of the Government Pensions Administration Agency (GPAA), Mr Krishen Sukdev; and

1.3 A Copy of the report will also be provided to:

1.3.1 Mr T A Setlai, who lodged the complaint (the Complainant);

1.4 The report relates to an investigation into allegations of improper conduct and maladministration by the Department of Correctional Services (Department) relating to the reinstatement of a former employee, Mr T A Setlai (Complainant) and the payment of his pension benefits.

## **2 THE COMPLAINT**

2.2 The complaint was lodged on 4 December 2013.

2.3 In the main, the Complainant alleged that:

2.2.1 He was employed by the Department in 1972 and in 1997 promoted to the Head of the Grootvlei Correctional Centre in the Free State Province.

2.2.2 In June 2006, he was dismissed after he had made submissions to the Jali Commission of Enquiry.

2.2.3 He referred his dismissal to General Public Service Sector Bargaining Council (GPSSBC). An arbitration award was issued on 22 February 2007 that ordered his reinstatement. The Department only reinstated him on 2 June 2008.

2.2.4 When he retired in 2013, his pension benefits were calculated from the date of his dismissal in 2006, i.e. for a period of service of less than 10 years, instead of from when he joined the Department in 1972, a period of more than 40 years.

2.2.5 The Complainant in essence contended that the conduct of the Department in failing to reinstate his pension benefits from the date that he was appointed in 1972, was improper, amounted to maladministration and caused him severe prejudice.

## **3 POWERS 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 the 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*

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



*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 made and the particular kind of remedial action taken, based on the demands of the

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

- 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 (para 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 (para 112).
- 3.8 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.

3.9 The jurisdiction of the Public Protector to investigate this matter was not disputed by the parties.

## **4 THE INVESTIGATION**

### **4.2 Methodology**

4.2.1 The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

4.2.2 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 the investigation**

4.2.1 The investigation was approached 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 amount to maladministration?

4.2.1.4 In the event of improper conduct or maladministration, what would it take to remedy the wrong or, where appropriate, to place complainant as close as possible to where he would have been, had the Department complied with the applicable standards for good administration.

- 4.2.1.5 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 failed to fully implement the Arbitration Award of the GPSSBC resulting in the Complainant not receiving the pension benefits due to him, to his detriment and prejudice.
- 4.2.1.6 The enquiry regarding what should have happened, focuses on the standard that should have been met by the Department in implementing the award of the GPSSBC in respect of the Complainant's reinstatement.
- 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.
- 4.3 On analysis of the complaint, the following were issues considered and investigated:**
- 4.3.1 Whether the Department failed to fully implement the Arbitration Award issued by the GPSSBC in favour of the Complainant on 22 February 2007; and if so
- 4.3.2 Whether the conduct of the Department was improper, constituted maladministration and prejudiced the Complainant.

## **4.4 The Key Sources of information**

### **4.4.1 Documents**

- 4.4.1.1 A copy of a letter from the Government Pensions Administration Agency (GPAA) to the Complainant dated 1 June 2006 regarding the calculation of his pension benefits as a result of his dismissal on 1 June 2006,
- 4.4.1.2 A Copy of the GPSSBC Arbitration Award: Case No. PSGA 280-06/07, dated 22 February 2007.
- 4.4.1.3 An Internal memorandum from the Regional Commissioner of the Department: Free State and Northern Cape (Regional Commissioner) to the National Commissioner of Correctional Services, dated 17 October 2008.
- 4.4.1.4 An Internal Memoranda from the Manager: Human Resources of the Department, to the Complainant on his pensionable service and benefits, dated 11 January 2013 and 10 July 2013
- 4.4.1.5 An Internal Memorandum from the Legal Services Section of the GPAA to the GPAA Office in Bloemfontein, dated 24 May 2013.
- 4.4.1.6 An Internal memorandum from the Manager: Human Resources of the Department to the Regional Commissioner, on an enquiry of the Complainant relating to his pension benefits due on his retirement on 30 June 2014, dated 19 April 2014.
- 4.4.1.7 An e-mail from GPAA to the Department on options available, dated 7 July 2015.

4.4.1.8 A letter from Human Resource Manager of the Department to the Complainant, dated 29 July 2015.

#### **4.4.2 Meetings held**

4.4.2.1 Meetings with the Complainant on 24 June 2014 and 14 January 2015.

4.4.2.2 An Alternative Dispute Resolution meeting with the former National Commissioner of Correctional Services and the Complainant, held on 2 September 2015.

#### **4.4.3 Correspondence between the Public Protector and:**

4.4.3.1 The GPAA on 27 August 2014 and 15 October 2014;

4.4.3.2 The Complainant informing him of the two options available, dated 19 November 2014

4.4.3.3 The Department, dated 4 September 2015 and 9 November 2015

#### **4.4.4 Legislation and other prescripts**

4.3.5.1 The Constitution of the Republic of South Africa, 1996;

4.3.5.2 The Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996);

4.3.5.3 The Labour Relations Act, No 66 of 1995, and

4.3.5.4 The Promotion of Administrative Justice Act, No 3 of 2000.

#### **4.4.5 Case law considered**

*4.4.5.1 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].*

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

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

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

#### **4.4.6 Notices issued in terms of section 7(9) of the Public Protector Act**

4.4.6.1 A notice was issued to the Head of the Department in terms of section 7(9) of the Public Protector Act on 19 February 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 LAW AND PRESCRIPTS**

**5.1 Whether the Department failed to fully implement the Arbitration Award issued by the GPSSBC in favour of the Complainant on 22 February 2007, in respect of his reinstatement**



Common cause or undisputed facts

5.1.1 It is not in dispute that the Complainant was appointed as an employee of the Department in 1972.

5.1.2 Further, that he was dismissed on 24 January 2006, and reinstated by an Arbitration Award, issued by the GPSSBC on 22 February 2007 that reads as follows:

- “1. The applicant, Tatolo Andrew Setlai, is hereby re-instated to his former position on the same terms and conditions as existed prior to his dismissal.*
- 2. The applicant is to resume duties on 24 March 2007.*
- 3. The respondent is to pay the applicant arrear salary from the date of dismissal i.e. 24 January 2006 to 24 January 2007.*
- 4. The arrear salary is calculated as follows:  
R21 588-53 per month x 12 months = R259 062-36.*
- 5. The sum of R259 062-36 is payable within 30 days from the assumption of duty by the applicant.*
- 6. There is no order for costs.”*

5.1.3 The Complainant retired in 2013 after having worked for the Department for a period of 41 years.

Issues in dispute

5.1.4 The Complainant submitted that when he retired in 2013, he received a gratuity from the GPAA, which was calculated on less than 10 years of service.

5.1.5 The Complainant's pension benefits were paid out to him by the GPAA after he was dismissed in 2006.

- 5.1.6 According to the Department, the GPAA was approached when the Complainant was reinstated to also reinstate him as a member of the Government Employees Pension Fund (GEPF), without any break in service. The GPAA advised that it could only be done if the Complainant refunded the GEPF with the amount that was paid to him when his services were terminated in 2006 or if he bought back years of pensionable service.
- 5.1.7 The Department submitted that the Complainant was advised accordingly on 5 January 2011, four years after he was reinstated. This has been denied by the Complainant.
- 5.1.8 In a Memorandum from the Regional Commissioner addressed to the former National Commissioner dated 17 October 2008, it was submitted that the payment of the Complainant's pension benefits for the period 1972 to 2006 when he was dismissed, would negatively impact on his retirement benefits. The National Commissioner was requested to advise on the way forward to assist the Complainant to receive the retirement benefits rightfully due to him. No evidence was found during the investigation that the National Commissioner responded to this Memorandum.
- 5.1.9 The Regional Commissioner submitted a further Memorandum on the matter to the National Commissioner, on 8 May 2013. It was in essence recommended that the Department requests the GPAA to recalculate the Complainant's pension benefits from the date of his appointment to the date of his retirement and that the amount that he received from the GPAA when he was dismissed in 2006 be deducted from the gratuity due to him for the entire period of his service. No response to this Memorandum was submitted by the Department during the investigation.
- 5.1.10 During an Alternative Dispute Resolution meeting held with the Department on 2 September 2015, the proposal submitted to the Department was that the

Complainant's pension should be re-calculated in terms of his entire period of service, that the amount paid to him on his dismissal be deducted from his gratuity, but that the interest on this amount be paid to the GPAA by the Department. The proposal was rejected by the Department without providing any justifiable reason.

#### Application of the relevant law

- 5.1.11 Section 23 of the Constitution affords fair labour practices to everyone and section 33 provides for administrative action to be lawful, reasonable and procedurally fair.
- 5.1.12 The GPSSBC is an accredited council, as contemplated by section 52 of the Labour Relations Act, 1995 to resolve disputes between employers and employees, in terms of section 51 of the Act.
- 5.1.13 Section 143(1) of the Labour Relations Act, 1995 provides as follows:

*"An arbitration award issued by a commissioner is final and binding and it may be enforced as if it were an order of the Labour Court, unless it is an advisory arbitration award".*

#### Conclusion

- 5.1.14 The Arbitration Award issued by the GPSSBC on 22 February 2007 compelled the Department to reinstate the Complainant to his former position on the same terms and conditions as pertained prior to his dismissal.
- 5.1.15 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”.*

5.1.16 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 employer to which he was entitled during the period of his dismissal must be repaid to him”.*

5.1.17 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 moneys that he/she would have been paid during the period of his/her unfair dismissal”. (emphasis added)

5.1.18 The Department therefore had to put the Complainant in the same position that he would have found himself in, were it not for the dismissal. His pension benefits accordingly had to be reinstated as if there was no break in his service. There was no obligation on the Complainant in this regard.

5.1.19 The attempts by the Regional Commissioner, long after the Complainant was reinstated, to have his pension benefits reinstated, yielded no results.

- 5.1.20 By the time that the Complainant retired in 2013, six years after his reinstatement, the Arbitration Award had still not been fully implemented.
- 5.1.21 The payment of the Complainant's pension benefits in 2006, due to his unlawful dismissal by the Department, had a devastating effect on the pension benefits paid to him when he retired. This should have been addressed by the Department as part of the implementation of the Arbitration Award, when the Complainant was reinstated.
- 5.1.22 The proposal that the Complainant's pension benefits be recalculated as if there were no break in his service, that the amount paid to him as pension benefits when he was dismissed in 2006 be deducted from the gratuity due to him and that the Department pays interest on the amount to the GPAA, was rejected without any justifiable reason by the Department.
- 5.1.23 The Department failed to fully implement the Arbitration Award issued in favour of the Complainant on 22 February 2007.

**5.2 Whether the conduct of the Department was improper, constituted maladministration and prejudiced the Complainant**

*Common cause or undisputed facts*

- 5.2.1 The Complainant was appointed in 1972 and retired in 2013. Due to the fact that he was dismissed during 2006, he only received resignation pension benefits for the years 1972 to 2006. It is common cause that it amounts to much less than retirement benefits.
- 5.2.2 The Arbitration Award issued in favour of the Complainant on 22 February 2007 ordered that the Complainant had to be reinstated on the same terms and conditions which existed prior to his dismissal.

- 5.2.3 The pension benefits of the Complainant were not reinstated by the time that he retired in 2013, to put him in the position that he would have found himself in, were it not for his unlawful dismissal by the Department.

Application of the relevant law

- 5.2.4 Section 143(1) of the Labour Relations Act, 1995 (LRA) provides as follows:

*“An arbitration award issued by a commissioner is final and binding and it may be enforced as if it were an order of the Labour Court, unless it is an advisory arbitration award.”*

Conclusion

- 5.2.5 The Department failed to fully implement the Arbitration Award issued in favour of the Complainant on 22 February 2007, as set out in paragraph 5.1 above.
- 5.2.6 The failure on the part of the Department was in violation of section 143(1) of the Labour Relations Act, 1995, was improper and constitutes maladministration.

## 6 FINDINGS

Having considered the evidence obtained during the investigation against the relevant regulatory framework, I make the following findings:

- 6.1 **Whether the Department failed to fully implement the Arbitration Award issued by the GPSSBC in favour of the Complainant on 22 February 2007**

6.1.1 The allegation that the Department failed to fully implement the Arbitration Award issued by the GPSSBC in favour of the Complainant on 22 February 2007, is substantiated.

**6.2 Regarding whether the conduct of the Department was improper, constituted 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 in section 182(1) of the Constitution and constitutes maladministration, as envisaged in section 6(4)(a)(i) of the Public Protector Act.

**7 REMEDIAL ACTION**

**7.1 National Commissioner of Correctional Services 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, from the date of his appointment, 5 July 1972, to the date of his retirement, 30 June 2013, taking into account the pension benefits paid to him upon his dismissal in June 2006, and interest due to him;

7.1.2 Ensure that the Department pays 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 National Commissioner; and

7.1.3 Within fourteen (14) working days of issuing this report, tender a written apology to the Complainant for the prejudice that he suffered due to the failure by the

Department to implement the Arbitration Award issued by the GPSSBC in favour of the Complainant on 22 February 2007.

## 8 MONITORING

- 8.1 The National Commissioner 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: 11/04/2019