



IN THE GENERAL PUBLIC SERVICE SECTOR BARGAINING COUNCIL

Held in Polokwane

Panellist: Mr PC Mabitsela

Case No: GPBC 1330/2024

Date of Award: 21/05/2025

In the Dispute between:

PSA obo DM Sechocho

(Union/Applicant)

And

Limpopo Provincial Treasury

(1st Respondent)

And

ME Shaku

(2nd Respondent)

Applicant's Representative: Mr M.R Sephoka

Respondent's Representative: Ms D Reineck

ARBITRATION AWARD

PARTICULARS OF PROCEEDINGS AND REPRESENTATION

1. This matter was set down for arbitration hearing on the following dates; on 12 February 2025; 23 and 24 April 2025. The proceedings were held at the Offices of the Respondent, Ismini Tower, no: 46 Hans van Rensburg Street, Limpopo Provincial Treasury, Polokwane.
2. The Applicant appeared and was represented by Ms D Reineck an Official from PSA. The Respondent (herein referred as Limpopo Provincial Treasury) was represented by its representative, Mr M.R Sephoka, Labour Relations Officer.
3. The Applicant's Bundle of documents was admitted on record and marked as Bundle A pages 1 to 136. The Respondent Bundles were marked Bundle B from page 1 to 70; Bundle B1 page 1 to 9 and Bundle B2 first two pages is Z83 and the CV page 1 to 09, respectively.
4. There was no objection for legal representation. These Arbitration proceedings were conducted in English, mechanically recorded and the hand written notes were also taken.
5. The closing arguments were filed in writing, the Respondent filed his arguments on 05 May 2025, I received on 05 May 2025, whereas the Applicant filed its closing arguments on 08 May 2025. I therefore regard the 08 May 2025 as the last day of this arbitration.

ISSUE TO BE DECIDED

6. I am required to decide whether the conduct of the Respondent in relation to the alleged Unfair Labour Practice (ULP) effected on the Applicant constituted an unfair conduct as contemplated in **Section 186 (2)(a) of the Labour Relations Act, Act 66 of 1995** as amended, and further required to order an appropriate relief on the support of evidence provided before me documentarily, through witnesses and from closing argument documents.

BACKGROUND TO THE DISPUTE

7. The Applicant is employed as an Assistance Director Governance, Monitoring and Compliances in Limpopo Province. The Applicant is been on the services of the Respondent from 2007 until date.
8. This award is issued in terms of **section 138 (7) of the Labour Relations Act**. The Commissioner must issue a signed arbitration award with brief reasons. Here follows the

summary of the evidence provided by the witnesses and written arguments that I recorded necessarily to substantiate the findings in the matter.

SUMMARY OF EVIDENCE AND ARGUMENT

The applicant's Case

The Applicant called one witness

Witness: DM Sechocho (The Applicant) testified under oath and state the following:

9. The Applicant gave opening statement followed by evidence in chief that she is an Assistance Director: Governance, Monitoring and Compliance in Limpopo Provincial Treasury, and that she has been in the service of the employer since 2007 +/- 17 years working at the same Department. The Limpopo Provincial Treasury's duties are to provide funds to Provincial Institutions and Public entities; ensure they provide budget shared accordingly and regularise abnormalities that are encountered. She further testified that her branch covers financial governance, improve audit options of the Provincial Institutions, approve and analyse Annual Financial Statement and Audit report, and that it is her duties to identify and analyse unwanted decisions such as irregular expenses, unauthorised expenditure, fruitless and wasteful expenditure.
10. The witness testified that the process used by the Respondent to fill the post was unfair to her and that she was denied opportunity to the post, that she applied for post which was advertised according to page 5, Applicant Bundle A for Deputy Director: Financial Management Capacity Building and the second Respondent as well applied for the post which required the learning field, page 7 and the educational requirements which is finance. She testified that she did comply with the advert qualification as she has two Degrees and that she complies with work experience as she had a background of Analysing annual financial statement. Further testified that the second Respondent did not comply with post in question as his qualification does not meet the minimum requirements. Qualification and experience go together as minimum requirement, page 81 -82 Applicant Bundle A qualification irrelevant.
11. She testified that the 2nd Respondent was not shortlisted because he did not have the experience of analysing annual financial statement like she did and that he was given a reasonable accommodation and he benefited without minimum requirements. She further

testified that the recommendation on page 109 makes her unhappy in that the Employment Equity Plan (EEP) was never mentioned and that if the 2nd Respondent would have complied, they would not be here resolving issue of the dispute. She felt that she was treated badly and opportunity was taken from her by administrative action, she was selected because she qualifies NQF level 7.

12. Under cross-examination the witness was referred to read the minimum requirements of the post and also testified that page 27 Respondent Bundle B is a degree: Bachelor of Arts, NQF level 7 of the 2nd Respondent and disagree that the duties he performs in page 19 were not in line with finance functions. She testified that the post advertised did have a target which are women and people with disability and that the 2nd Respondent did not qualify for the post because of his qualification but his disability makes him a target, recommendations were confirmed by the interview panel and sent to the employer for the DDG approve or can delegate the powers. Under re-examination she testified that the qualification which the 2nd Respondent has is not relevant to the post and that a financial relating course was needed and the Capacity Building is within the finance field. Respondent Bundle page 23, bullet 6-7 is work experience and page 24 is not relevant to job description of the post.

The Respondent's case

The Respondent called one witness to testify.

Witness: L Ebrahim: testified under oath as follows:

13. She testified that she is employed by the Limpopo Provincial Treasury as a Deputy Director General: Corporate Services and that she is responsible for 1. Corporate services, 2. Overseeing human resource management, 3. Employee utilisation and capacity building, 4. Security services, 5. Transformation services, 6. Information management: communication services, information communication technology, records and auxiliary services, 7. Strategic management, and 8. Legal services. She confirmed that the Department advertised a post on page 1 - 4 post **no: LPT/425; Circular No 25/2022** and the target of the post was on page 17 para 15 and page 4 Applicant Bundle last paragraph. The Institution required implementation for Employment Equity Act and developed a 5 years Equity Plan which is regulated by Public Regulation Act and that the Department has made it clear in the advertisement; as refer to Respondent Bundle page 65 to 66. Applicant Bundle A, page 5 was applied is to limit the

applications, and that applications are registered, scheduled for registry and approved by the Panel for those who meet the minimum requirement.

14. She testified that the post requires an NQF level 7 recognised by SAQA and 3 years' experience. The 2nd Respondent was appointed based on the fact that he does have NQF level 7, 3 years' experience and that he is a person living with disability. The witness testified that the recommendation made by the panel is not a final decision but the DDG of the Department takes a final decision.
15. Under cross-examination the witness testified that the 2nd Respondent has a public framework. She was asked why the 2nd Respondent (Mr Shaku ME) was not shortlisted on the applicants list on page 17-18, Applicant Bundle A and the answer was that he meets the minimum entry requirements. Further it was put to her that Mr Shaku page 80 that the 19 candidates were not shortlisted for not having financial qualifications including Mr Shaku did not have financial qualification and for him to qualify he must have a financial background, the witness's response was that they are guided by Policy, there was one (1) disable African man and that the employer wanted to reach EE plan target, all the procedures were fair. She further testified that Mr Shaku's qualification is relevant, as it is a primary qualification NQF level 7 which is required as per page 5 of Applicant Bundle A.
16. Under re-examination she confirmed on record that the requirements in page 5 Applicant Bundle A, the post required NQF level 7 and the added requirement would be 3 years' experience and valid driver's licence.

ANALYSIS OF EVIDENCE AND ARGUMENT

17. The matter was referred in terms of **section 186 (2)(a) of the Labour Relations Act 66 Of 1995**. The Applicant alleged an Unfair Labour Practice by the employer for not promoting her to the next level.
18. An employee may challenge his/her failure to be promoted with reference to the procedure adopted in making a determination on whether to promote or not and the reasons for failing to promote him/her must be established. In **Department of Justice v CCMA and Others (2004) 13 LAC**, the Court held that "an employee who complains that the employer's decision or conduct in not appointing him constitutes an unfair labour practice must first establish the existence of such decision or conduct. If the decision or conduct is not established, the claim must be dismissed".
19. It is common cause that the Limpopo Provincial Treasury advertised a post No: LPT/425. The advert was for the position of Deputy Director: Financial Management, Capacity Building. The

Applicant, Ms Sechocho DM was in the list of the successful candidates who were shortlisted and then invited with others for interviews, where she obtained 70% outcome results of the interview, following Mr Phasha PV who was given 72% outcome results.

20. It is also common cause that the Applicant lodged a dispute with the General Public Service Sectoral Bargaining Council (GPSSBC) against the Department in regard to Mr Shaku ME, 2nd Respondent disabled employed into the post LPT/425. There were minimum requirements set to qualify for the post, which is NQF level 7 as recognised by SAQA; skills and knowledge; competencies and key performance areas in the above-mentioned advertised post for consideration. The Applicant testified on record that the name of Shaku ME is not on the list, Applicant Bundle A, page 17-18 the first phase (phase 1), he did not have the necessary minimum requirements.
21. Our point of departure lies with the directions of the advertised post: Deputy Director: Financial Management Capacity Building. The criteria which the candidates used were outlined in the said advertisement and the candidates who had interest and capacity were guided by the policy of the Department.
22. The Limpopo Provincial Treasury appointed competent committee to deal with issues related to shortlisting and interviews as guided by the policy of the same Department. On the long list Mr Shaku ME was number 39, Ms Sechocho DM was number 7 and Ms Tsotsa Y number 6, this was with reference to Applicant Bundle A, page 9-16. On Applicant Bundle A, page 16 the remarks about Mr Shaku were that he lacks the required experience of all areas of Financial Management as a shortlisting criterion. Further on page 17 -18 of the recommendation, Mr Shaku ME's name was not in listed and Ms Sechocho MD on page 18 of Applicant Bundle A was number 7 and the 2nd Respondent Mr Shaku was not within the recommended list.
23. On the 07/08/2023, Applicant Bundle A, page 56 is where some of the Executive Authority members approved the recommendation from the panel except the Deputy Director General (DDG) who disapproved the recommendation and returned the recommended list back to the panel to consider the application of Mr Shaku ME, the disabled candidate who met the minimum requirement entry level NQF 7, from page 67-80 the panel come up with the findings that Mr Shaku ME be affirmed and was given reasonable accommodation based on his disability. On the re-shortlisting of the 7 applicants recommended for the post, Ms Sechocho appeared on number 6 and the name of Tsotsa Y was removed then Mr Shaku appeared on number no 7. In page 82 the re-shortlisting panel agreed to affirm Mr Shaku ME although he lacks 4 years or accumulative experience in the analysis or review annual Financial Statement. In his approval was also the issue to address the Employment Equity Act (EEA) target as the Department was under representation for person living with disability which was at 1.8%.
24. On page 89, 92 and 96 the panel recommended that in case Mr Phasha PV who scored the highest at 72% declines the appointment offer, Ms Sechocho who scored 70% be appointed to the post. The recommendation of Mr Machevele MS, page 111, Chief Director: Corporate Services was that Mr Shaku who obtained the score of 64% in the interview be offered the post so that it assists the Department to achieve the 2% target. The DDG- Corporate

Management Services approved the appointment of Mr Shaku to the post of Deputy Director: Financial Management Capacity Building.

25. In conclusion the Limpopo Provincial Treasury, Polokwane went through various levels to reach and close the gap, some changes were not disclosed in the advertisement criteria and they contributed to the disadvantage towards the Applicant (Ms Sechocho DM). Evidence was laid before the Commission, some conclusions by the panel do not corroborate with the decision of the DDG. This demonstrate the inconsistency and procedure was also not followed as set out by the panel committee from the beginning. Based on the facts above I find the Department breached the code of the advertisement which the Applicants followed when applied for the post. The Department is ordered to pay a 1-month salary as compensation to Ms Sechocho DM as it reflects on the advertisement salary scale per annum, which is R744 255.00 p/a. The compensation amount will be R62 021,25 which is equivalent to a 1-month pay salary.

Remedy

26. **Section 186 (2) of the LRA** only implies that an employee has a right to be fairly considered for a promotion or appointment, is a legal right confirmation to fair labour practice with respect to appointment of employees. After careful consideration and analysis of the evidence from both parties, the following conclusion was reached:

AWARD

27. The Limpopo Provincial Treasury is ordered to pay the amount of R62 021,25 (Sixty-Two Thousand Twenty-One Rand and Twenty-Five Cents) only which is equivalent to 1-month salary of the advertised post as a compensation.

28. The amount must be paid into the account of the Applicant, banking details known to the Respondent and this must be paid on 15/07/2025.

29. There is no order as to cost.



GPSSBC Arbitrator

PC Mabitsela