



**IN THE LABOUR COURT OF SOUTH AFRICA, GQEBERHA**

**Not Reportable**

**CASE NO: P95/24**

In the matter between:

**NOMZINGISI ALLETA TUKELA**

**Applicant**

And

**DEAN MCPHERSON MP**

**First Respondent**

**DEPARTMENT OF PUBLIC WORKS & INFRASTRUCTURE**    **Second Respondent**

**Heard: 13 June 2025**

**Delivered: This judgment was handed down electronically by circulation to the Applicant's and Respondents' Legal Representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing - down is deemed to be 14h30 on 16 October 2025.**

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**JUDGMENT**

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**LALLIE J**

[1] The applicant launched this application seeking an order that the first respondent be found guilty of contempt of court for failing to comply with a certified arbitration award of the General Public Service Sectoral Bargaining Council (GPSSBC) dated 6 August 2023. The application is opposed by the respondents.

[2] The facts relevant to this dispute are that the applicant was employed by the Department of Public Works and Infrastructure (the department) as a Chief Director (Regional Manager) based in Mthatha on 1 July 2008. She was dismissed on 18 June 2019 and challenged the fairness of her dismissal by referring a dispute to the GPSSBC. After arbitrating the dispute, the GPSSBC, on 6 August 2023 issued an arbitration award in the following terms:

“268 The dismissal of the Applicant by the Respondent on the 18 July 2019 was procedurally and substantively unfair.

269 The Respondent is hereby ordered to reinstate the Applicant in her previous position as the Chief Director with the same terms and conditions as they prevailed prior to the dismissal. The reinstatement must be from 01 September 2023.

270 Given the passage of time from the date of dismissal of the Applicant it may not be practical to place her in her original position in Mthatha. The Respondent will determine where she will be placed, and provide her with three places to choose from before the date of the reinstatement.

271 The Respondent is ordered to pay the Applicant back pay amounting to R4 321 261 within thirty (30) days form the date of receipt of this award.

272 The amount is subject to all the statutory deductions and does not incorporate salary increments (if any) over the period from 2019 to date.”

- [3] The requirements for contempt of court are settled. The Constitutional Court re-affirmed them in *Pheko and Others v Ekurhuleni Metropolitan Municipality (Socio-Economic Rights Institute of South Africa as amicus curiae)*<sup>1</sup>. They are the existence of a court order. The order must be duly served on, or brought to the attention of the contemnor. There must be wilful and *mala fide* non-compliance with the court order. It is common cause that an order in the form of an arbitration award certified in terms of section 143(3) of the Labour Relations Act<sup>2</sup> (the LRA) exists. It is further common cause that the certified award was brought to the respondents’ attention. The first respondent, however, denied being in wilful and *mala fide* non-compliance with the certified award. He alleged that the certified award was complied with in that the department, acting in terms of paragraph 270 of the certified award, provided the applicant with three positions to choose from but she rejected them.
- [4] The applicant insisted that in the award the department is ordered to reinstate her in her previous position as Chief Director on the same terms and conditions which prevailed prior to her dismissal. She submitted that the previous position as Chief Director the arbitrator referred to in the award is the one she held as the Regional Manager of the O.R Tambo Region in Mthatha. The first respondent submitted that the applicant cannot be reinstated into the Mthatha post as it has been filled. He

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<sup>1</sup> 2015 (6) BCLR 711 (CC) at para 32.

<sup>2</sup> Act 66 of 1995, as amended.

pointed out that in June 2011 employees of the Mthatha regional office and NEHAWU, a trade union, lodged complaints of, *inter alia*, abuse of power and staff victimization against the applicant. In a letter the applicant received on 3 August 2017, she was informed by the then Minister of the department of her horizontal transfer to the department's Intergovernmental Relations Unit (IGR) with retention of her permanent employment status and benefits. The applicant was placed at the IGR Head Office and Ms Hlengwa (Hlengwa) was appointed to the post of Regional Manager, Mthatha. On dismissal the applicant had been at the IGR Head Office for nearly two years.

- [5] The first respondent submitted that the applicant cannot be reinstated in the Mthatha post as it had been filled. He added that employees at the Mthatha office represented by NEHAWU will oppose any talk of placing the applicant back in the post. He expressed the fear that placing the applicant in the Mthatha office will place the department at risk of service delivery challenges and reputational damage.
- [6] The applicant challenged the validity of the respondents' refusal to place her at the Mthatha office. She submitted that the law does not preclude her reinstatement to a position the department has already filled. She further submitted that the 2011 complaints against her are antient history and that things have changed as some employees from the Mthatha regional office even supported her during her disciplinary enquiry and at arbitration. She further denied that her transfer to IGR Head office was effected formally.

- [7] In order to determine whether the first respondent is in *mala fide* and wilful non-compliance with the certified award in circumstances where he alleged that the terms of the award were complied with it is necessary to consider what the arbitrator ordered. In paragraph 270 of the award the commissioner made the following order:

“Given the passage of time from the date of dismissal of the Applicant it may not be practical to place her in her original position in Mthatha. The respondent will determine where she will be placed, and provide her with three places from before the date of the reinstatement.”

- [8] The first respondent relied on the first sentence of paragraph 270 of the award and submitted that it was not practical to reinstate the applicant in the position she held in Mthatha. The applicant was then offered 3 positions in terms of the last sentence of paragraph 270. By so doing the respondents complied with the award. The applicant denied that the term ‘may not be practical’ in paragraph 270 of the award included the appointment of Hlengwa, the filling of the Mthatha position and the 2017 instruction moving her to the IGR Head Office. The different interpretations of paragraph 270 of the award is a manifestation of its ambiguity. Any relief an arbitrator grants in terms of section 193 of the LRA must be clear. It must inform each party in unequivocal terms of the steps it needs to take in complying with it. The clarity plays a crucial role in the determination of compliance with an award. A decision on a contempt of court application has serious ramifications for both parties. Its correctness which depends, *inter alia*, on the clarity of the award cannot be overlooked. As paragraph 270 of the award is ambiguous there is a need to

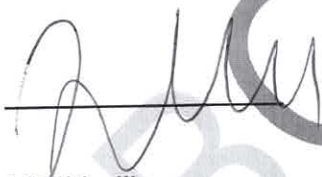
have the ambiguity elucidated. The only person who can clear the ambiguity is the arbitrator who arbitrated the dispute and issued the award.

[9] The appropriate order in the circumstances is to remove the matter from the roll and remit the matter to the GPSSBC for arbitrator Safa to vary the award by couching paragraph 270 of the arbitration award in clear and unequivocal terms.

[10] I could find no reason in fairness to grant a costs order in this matter.

[11] In the premises, the following order is made:

1. The matter is removed from the roll.
2. The matter is remitted to the GPSSBC for Arbitrator Mbulelo Safa to vary paragraph 270 of the arbitration award under case number HGPBC1234/2019 dated 6 August 2023 by couching its terms in clear and unambiguous terms.
3. There is no order as to costs.



MZN Lallie

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Advocate A. Rawjee SC

Instructed by The State Attorney

For the Respondents: Mr J Mama of Java Mama Attorneys

LABOUR COURT