

# ARBITRATION AWARD

Panelist: RG Pieterse \_\_\_\_\_  
Case No.: GPBC1166/2021 \_\_\_\_\_  
Date of Award: 28 December 2021 \_\_\_\_\_

## In the ARBITRATION between:

PSA obo S Masinamela & others \_\_\_\_\_  
(Union obo Applicant)

and

Department of Correctional Services \_\_\_\_\_  
(Respondent)

**Union/Applicant's representative:** Archie Sigudla \_\_\_\_\_  
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### **DETAILS OF HEARING AND REPRESENTATION**

- [1] This is the award in the arbitration between PSA obo S Masinamela & others, (hereinafter referred to as the Applicant) and the Department of Correctional Services, (hereinafter referred to as the Respondent).
- [2] The arbitration was held under the auspices of the General Public Service Sectoral Bargaining Council (GPSSBC) in terms of section 191 of the Labour Relations Act 66 of 1995 as amended (LRA) and the award is issued in terms of section 138 (7) of the LRA.
- [3] This award is not intended to be a verbatim transcript of the evidence led at the arbitration hearing but rather a determination with brief reasons for such determination.
- [4] Evidence relevant to the determination or to support any of the elements of fairness as required may be referred to. This however does not mean that I failed to consider other evidence or ignored such evidence in coming to my decision.
- [5] The arbitration was a virtual hearing. The Applicant was present and represented by Mr Archie Sigudla from the PSA and the Respondent was represented by Mrs Matina Tenyane.
- [6] Both parties submitted their heads of argument on 17/12/2021.

### **ISSUE TO BE DECIDED**

- [7] The issue to be decided is whether or not the conduct of Respondent by not placing the applicants on salary level 7 constitutes an unfair labour practice in terms of section 186(2)(a) of the Labour Relations Act.

### **BACKGROUND TO THE ISSUE**

- [8] The Applicants are officials in the employ of the Department Correctional Services appointed at the Gauteng Regional Office performing the duties of support staff under the directorate of Corporate Services and Development Care.
- [9] The Respondent structure was created with the positions held by the Applicant graded and funded at the salary level SR-07, however, when the Respondent advertised those positions, the positions were

pitched at salary level SR-05 despite the fact that there was no job evaluation done with regards to those positions.

- [10] The Applicants were appointed and were placed against salary level SR-07, but were remunerated at salary level SR-05.
- [11] Disgruntled with that omission, they lodged a grievance and the respondent replied that those positions were downgraded in terms of the GPSSBC Resolution 2 of 2009 wherein the entry level would be at salary level SR-05.
- [12] Dissatisfied with the response of the Respondent, they lodged an unfair labour practice dispute relating to the provisions of benefits as contemplated in terms of section 186(2)(a) of the LRA.
- [13] There are 10 applicants in this matter to wit:
- 1) Masinamela S, with employment date 01 March 2016;
  - 2) Magagula TS, with employment date 01 March 2016;
  - 3) Rokhotso ME, with employment date 01 June 2019;
  - 4) Thungela ME, with employment date 23 August 2013;
  - 5) Ramuoki MM, with employment date 01 December 2013;
  - 6) Mohlokoane EM, with employment date 02 May 2017;
  - 7) Sekgobela SM, with employment date 03 June 2019;
  - 8) Sethosa NB, with employment date 01 April 2015;
  - 9) Letsoalo TG with employment date 01 January 2015 and;
  - 10) Maluleke MJ with employment date 01 July 2014.
- [14] It was agreed between the parties that only two (2) applicants will testify in the arbitration proceedings as the evidence of all the applicants will be the same and will be duplicated if all the applicants would testify.

## **SURVEY OF EVIDENCE AND ARGUMENT**

### **APPLICANT'S CASE**

#### **Mr Shillboy Masinamela**

- [15] Mr Masinamela testified that he is employed by the Respondent at Gauteng Regional Office in the position of an HR Administrative Officer, with salary level SR-05 with effect from 01 March 2016.

- [16] He testified to the organizational structure<sup>1</sup> dated 01 October 2003. He testified that he and the rest of the applicants are categorized under Corporate Services and falls under salary level SR-07.
- [17] He further testified that he and the other applicants are appointed in terms of the Public Service Act and they are support staff.
- [18] He testified that there is another category of employee to wit, the employees who are employed in terms of the Correctional Services Act, but they do not fall under that category.
- [19] He further testified on GPSSBC Resolution 2 of 2009<sup>2</sup> which refers to two categories of employees within the Department of Correctional Services to wit, Centre Based and Non-Centre based employees.
- [20] He testified that Resolution 2 of 2009 does not apply to employees appointed in terms of the Public Service Act of 1994 as amended.
- [21] He testified that he applied for the position as advertised with salary level SR-05<sup>3</sup>. He went on to testify that, after resuming his duties as HR Clerk, he became aware that the position he applied for was actually a salary level SR-07 as per the PERSAL system.
- [22] He started to do his own research and found that other officials employed by the Respondent in other regions namely, Limpopo, Mpumalanga and North West (LMN), Kwa-Zulu Natal, Western Cape and Eastern Cape were appointed on a higher level in terms of the organizational structure.
- [23] The applicant testified that the purpose of the internal memorandum<sup>4</sup> of the National Commissioner dated 05/04/2011 was to clear the appointments on PERSAL and to ensure that officials are correctly placed on the structure as articulated by Mr E Khoza, Acting DC HR Management<sup>5</sup>.
- [24] The applicant testified extensively about the inconsistency of the Respondent in that his counter parts in other provinces occupying and appointed in similar positions are remunerated at salary level SR-07. Examples of theses inconsistencies are:

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<sup>1</sup> Page 22 and 23 of Bundle A

<sup>2</sup> Page 24 of Bundle A

<sup>3</sup> Page 40 of Bundle R

<sup>4</sup> Page 11 – 19 of Bundle A

- 1) Region LMN, Ms. Lucia Rametsi who is at Placement HR as Administrative Officer as well as Tshepo Dlamini working at Recruitment as an Administrative Officer;
- 2) Region KZN, Nala Vulindlela, who is working in Personnel as Administrative Office and Mbaliyenhle Sithole who is working in Placement and transfers as an Administrative Officer;
- 3) Region Western Cape, Hermos Keanana who is working in Placement and Transfers as an Administrative Officer (retired now).

[25] He further testified that the positions advertised in other provinces, those positions were advertised on a salary level SR-07.

**Mrs Tungela**

[26] Mrs Tungela testified that she was on an internship program with the Respondent during 2012 and the position she applied for at the time held by her mentor, Mr Lucky Pholafodi, was at salary level SR-07.

[27] She further testified that she is on salary level SR-07 despite the fact that she is not receiving that salary.<sup>6</sup>

[28] She further testified that her job is that of an Administrative Officer and she is not receiving that salary.

[29] During cross-examination, she testified that, for a position to be remunerated at a lower level, such post should have been downgraded and a post cannot be downgraded if there was no job evaluation conducted.

[30] The applicants contends that the position was never converted as was required before appointing the applicants to those positions which are graded at salary level SR-07.

**RESPONDENT'S CASE**

**Mr Masango**

[31] Mr Masango testified that he was appointed as Assistant Director: Recruitment since 2010. His responsibilities amongst others are to advertise posts, selection of potential incumbents and the appointment of employees.

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<sup>5</sup> Page 17 of Bundle A

<sup>6</sup> Page 37 of Bundle A

- [32] He testified that the organizational structure is not utilized when advertising vacancies because the positions appearing on the structure were never approved due to budget constraints. He testified that the positions appearing on the proposed organizational structure were never funded.
- [33] He testified that the vacancies were advertised in line with the classification document which classify positions in according to grading in salary levels<sup>7</sup>.
- [34] In instances where certain positions do not appear on the classification document, a memorandum is forwarded to HR Planning in Head Office to create the post and grade the correct salary level for the specific position.
- [35] He testified that the classification document was meant to realign all positions within DCS which are classified and to convert posts which are classified once they become vacant.
- [36] He further testified that the Regional Office does not have delegation to conduct job evaluations, as it is the delegations of HR Planning together with the Department of Public Service Administration. He was not certain whether job evaluations were conducted, however he believes so, hence the classification documents.
- [37] He testified that the current PERSAL system is not aligned with Classification Documents, hence you will find PERSAL print-outs which indicates different codes for the same job title, for example:  
Mr Masinamela is AO; Recruitment with job code 40207<sup>8</sup> whereas the job title of Ms. Makwarela is AO: Placement with job code 40206<sup>9</sup>.
- [38] He reiterates that all the applicants were correctly appointed in accordance with the advertisement of the post, together with their appointment.

## **ANALYSIS OF EVIDENCE AND ARGUMENT**

- [39] It is not in dispute that the applicants<sup>10</sup> are appointed at Regional Office on salary level 5.

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<sup>7</sup> Page 83 of Bundle R

<sup>8</sup> Page 32 of Bundle A

<sup>9</sup> Page 49 of Bundle A

<sup>10</sup> Page 55 of Bundle A

- [40] They were appointed after due processes were followed to wit, Advertising of the posts, selection and appointment of successful candidates.
- [41] The applicant's case is that they were appointed in line with the proposed organizational structure<sup>11</sup> which was approved with an unknown date and the respondent argued that the proposed organizational structure was never approved due to lack of funding.
- [42] I had the privilege to look at the Pre-Arb minutes again and more specifically paragraph 3<sup>12</sup>, facts that are common cause to wit:
- i. Applicants are employed by the respondent in positions of Administration Clerk at Salary Level SR-05;
  - ii. The positions held by the applicants were graded and pitched at salary level SR-07 and;
  - iii. The positions held by the Applicants were advertised at salary level SR-05 and applicant were appointed in line with that advertisement however placed against position that are salary level SR-07 of the respondent establishment structure, despite the fact that there was no job evaluation conducted.
- [43] The only fact in dispute<sup>13</sup> is whether the conduct of the respondent of not having placed the applicants' positions of salary level SR-05 against the existing positions of the structure which are salary level SR-07 when there was no job grading done with regards to those positions constitute unfair labour practice.
- [44] The positions the applicants occupy is graded at salary level SR-07 and not at salary level SR-05. It is not in dispute that downgrading of a post can only be done after a job evaluation was done.
- [45] In this instance, there is no evidence whether or not a job evaluation was done by the employer, I will then accept that no job evaluation was done and no job downgrading was done.
- [46] It then follows that, the positions the applicants occupy, are graded by the respondent at salary level SR-07 and should be remunerated at salary level SR-07 as well.
- [47] In my view, it becomes irrelevant whether the advertisement mentioned the positions are level SR-05, because the positions are graded as salary level SR-07, no job evaluation was done and the positions could not have been downgraded.

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<sup>11</sup> Page 22 of Bundle A

<sup>12</sup> Page 55 of Bundle A

<sup>13</sup> Page 55 of Bundle A



- [48] It is my view that the salary level mentioned in the advertisement was incorrect.
- [49] It is my considered view that the applicants were incorrectly appointed and graded at salary level SR-05 and furthermore they have been deprived of all the benefits associated with salary level SR-07.
- [50] It is my finding that the Respondent committed an unfair labour practice by not placing the applicants on salary level SR-07 and that the applicants should be remunerated at salary level SR-07 as it is graded as such and not at salary level SR-05.

### **AWARD**

- [51] In the premises I make and deliver the following award:
- [52] The Respondent committed an unfair labour practice in terms of Sect 186(2)(a) of the LRA by remunerating the applicants on salary level SR-05.
- [53] The Respondent is hereby ordered to place the applicants on salary level SR-07 with immediate effect.
- [54] The Respondent is ordered to adjust the appointment of the applicants accordingly.
- [55] The Respondent is further ordered to pay benefits, including, but not limited to remuneration, pay progression and performance bonuses, to the applicants attached to their positions of  
AO: Administrative Officer, salary level SR-07 with retrospective effect from the respective dates of appointment of the applicants.
- [56] There is no order as to costs.



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Panelist: RG Pieterse