



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case No: JR1428/22

In the matter between:

PATRICK ZINGENI

Applicant

And

**GENERAL PUBLIC SERVICE SECTOR
BARGAINING COUNCIL**

First Respondent

RONALD MUDAU

Second Respondent

DEPARTMENT OF CO-OPERATIVE GOVERNANCE

Third Respondent

MUNICIPAL INFRASTRUCTURE SUPPORT AGENCY

Fourth Respondent

Heard: 12 August 2025

Delivered: 18 September 2025 (This judgment was handed down electronically by emailing a copy to the parties. The 18 September 2025 is deemed to be the date of delivery of this judgment).

JUDGMENT

RAMJI, AJ

Introduction

- [1] This case concerns an employee (the applicant) appointed to a senior government post in circumstances where: (a) he does not have a matric certificate; (b) he also did not purport to have a matric certificate; (c) the employer's external verification service provider confirmed that the matric certificate could not be verified prior to the employee's appointment; (d) the applicant produced a statement of matric results; (e) the employer does not challenge the validity of the applicant's tertiary qualifications; and (f) the applicant states and believes that he matriculated and has submitted all documents which he submits reflects this.
- [2] The issue is where blame lies. The employer argues that it lies with the respondent for not having a matric certificate and for misrepresenting this. The applicant argues that the employer knew that he did not have a matric certificate, that he did not misrepresent this, that it employed him anyway and therefore had no right to dismiss him for this reason, let alone dismiss him summarily. He also argues that a matric certificate was not a listed job requirement. The post is for a chief civil engineer of the province.
- [3] The dismissal was found procedurally unfair and substantively fair. The applicant represented himself in an application to review an arbitration award made by the second respondent (the Commissioner) on 30 May 2022 under the auspices of the first respondent (the Council). The third and fourth respondents oppose this application (the Department and MISA, respectively, and the respondents, collectively).
- [4] In the alternative to his review in terms of section 145 of the LRA, the applicant submitted that the decision is reviewable in terms of section 158(1)(g) of the LRA. The applicant's review grounds are all covered by section 145(2) of the LRA.¹ He has no review grounds beyond the

¹ Section 145(2) of the LRA provides for the review of an arbitration award where –

'(a) ... the commissioner

(i) committed misconduct in relation to the duties of the commissioner as an arbitrator;

(ii) committed a gross irregularity in the conduct of the arbitration proceedings; or

(iii) exceeded the commissioner's powers; or

(b) that an award has been improperly obtained.'

Commissioner allegedly committing gross irregularities and exceeding his powers. He has laid no basis to rely on section 158(1)(g) of the LRA. I therefore consider the review application solely in terms of section 145 of the LRA.

- [5] The applicant was employed by MISA, a government component within the Department. He was summarily dismissed by MISA through written correspondence on 16 March 2020. The applicant referred an unfair dismissal dispute to the Council. The Commissioner found that the applicant's dismissal was substantively fair but procedurally unfair and awarded him two months' salary as compensation.
- [6] The applicant challenges the finding of substantive unfairness and the amount of compensation awarded to him by the Commissioner based on the finding of procedural fairness.
- [7] This judgment is structured as follows:
- 7.1. The respondents' point *in limine* that the application has been archived and therefore is not properly before the Court in the absence of a reinstatement order by the Court.
 - 7.2. The respondents' point *in limine* that the founding affidavit which accompanied the notice of motion was not substantially compliant with the Justice of the Peace and Commissioners of Oaths Act 16 of 1963 (the Oaths Act) and therefore this matter is not properly before the Court.
 - 7.3. The background to the matter, from the applicant's appointment to his summary dismissal.
 - 7.4. A summary of the arbitration proceedings and the arbitration award.
 - 7.5. The applicant's review grounds with reference to reasonableness.
 - 7.6. Relief.

Archiving

- [8] The respondents submitted that the case was archived and regarded as having been dismissed.
- [9] They argued that clause 16.1 of the Practical Manual applied because there was a directive from the *Judge President* to file heads of argument, which was issued on 15 March 2023. It is undisputed that the applicant did not meet the 15-day deadline. Instead, the respondent first filed heads of argument on 28 February 2024, and the applicant then filed his heads of argument on 8 March 2024.
- [10] The respondent is incorrect. The directives to file heads of argument were the Registrar's directives and not a judge's directives, and so the applicants cannot rely on clause 16.1 of the Practice Manual. No further submissions were made on other aspects of the Practice Manual relating to archiving.
- [11] The next question is the application of clause 11.2.7 of the Practice Manual², although this was referred to in passing by the respondents and not argued fully. It provides:
- ‘An applicant in a review application is therefore required to ensure that all the necessary papers in the application are filed within twelve (12) months of the date of the launch of the application (excluding Heads of Arguments) and the registrar is informed in writing that the application is ready for allocation for hearing. Where this time limit is not complied with, the application will be archived and be regarded as lapsed unless good cause is shown why the application should not to be archived or be removed from the archive’ (Own emphasis)
- [12] It is correct that there is no sign from the court file that the applicant informed the Registrar that the application was ready for allocation.
- [13] The Practice Manual does not contain deeming provisions for the archiving of matters, in contrast to the deeming provision for the withdrawal of a review application when a record is not filed within the prescribed period. Nevertheless, the Labour Appeal Court (LAC) has held that –

² Practice Manual of the Labour Court of South Africa, effective 2 April 2013, repealed with effect from July 2024.

‘the archived case acquires a peculiar status which requires the delinquent party to justify why it should be reinstated and thereafter be entertained by a court in the wake of a lack of expeditious prosecution. The Labour Court *a quo*, treated the ‘archiving’ as an administrative act, not as a matter of status. The significance of this distinction between status and an administrative act is that the acquisition of a peculiar status means that upon a given event, the status automatically adheres to the case.’³

[14] The position taken in *E-Tradex (Pty) Ltd t/a Global Trade Solution v Finch and Others*⁴ (*E-Tradex*) is distinguishable from this case.

14.1. In *E Tradex*, the LAC rejected the Labour Court’s finding that the Registrar’s act of setting a review application down for hearing meant that the case had not been archived and that the enrolment by the registrar ‘resuscitated’ the case.⁵

14.2. This case is different in respect of the enrolment. After considering the file, and after heads of argument had been exchanged, on 1 August 2024, Molahlehi AJP issued directives to the Registrar to enrol the review application on the opposed motion roll to all parties. In this respect, the enrolment of the applicant’s case accords with the LAC’s requirement for intervention by the Court, expressed in *E Tradex*:

‘There can be no plausible doubt that once the case is “archived” it requires the intervention of the court to “un-archive” it. There is no room to read into these provisions a role for the registrar to “resuscitate” the case.’ (Own emphasis)

14.3. It was not the Registrar’s decision, but a judge’s directive that triggered the enrolment. That is ‘*the intervention of the court.*’

³ *E Tradex* (at para 11) is also significant that the new rules provide for the Registrar ‘*must first issue a notice affording the initiating party 15 days to take a further step*’, suggesting that an administrative step is now required, to the extent that one was not previously required (see Rule 7(2) of the new Rules).

⁴ [2022] ZALAC 106; (2022) 43 ILJ 2727 (LAC).

⁵ *E Tradex supra* at para 8.

14.4. I have also considered the more recent decision in *South African Commercial Catering and Allied Workers' Union v Putini (Putini)*,⁶ where the LAC, considering the use of the archiving provisions of the Practice Manual as a tactical ploy to frustrate an employee, as the employer delays in prosecuting its review. First, it noted that the Practice Manual promotes a '*spirit of cooperation between litigants and the granting of an indulgence to each other.*'⁷ It went on to hold:

'The drafters of the Practice Manual never envisioned a situation where its provisions would be used by parties as a tactical ploy. Conversely, the provisions of the Practice Manual call for flexibility in their application when that is necessary to promote their purpose.'⁸

14.5. Although the respondents' conduct was not a tactical ploy, it was a misstep that propelled the matter forward.

14.6. The respondents had the option of writing to the Registrar to request that the file be archived, alternatively, to leave the matter and raise the point *in limine* should the applicant have sought to set the matter down for hearing, based on *E Tradex*. Instead, they chose, legally advised, to file heads of argument, leading to the applicant filing his heads of argument, and Molahlehi AJP issuing directives to the Registrar to enrol the matter.

14.7. I have also considered that the applicant filed all papers and the record timeously, and that he has not been legally represented in this Court.

14.8. Perhaps a judge would not have directed the enrolment of the matter had the respondents not filed heads of argument, but the fact is that after the file was automatically archived in terms of *E Tradex*, there was '*the intervention of the court*'.

[15] For these reasons, the first point in *limine* is dismissed.

⁶ [2025] ZALAC 11.

⁷ *Putini supra* at para 12.

⁸ *Putini supra* at para 13.

Commissioning founding affidavit

[16] The applicant filed his review application on 27 July 2022. He was representing himself in this Court from the outset. The notice of motion was signed on 26 July 2022. It is accompanied by a founding affidavit. The respondent pointed out the following issues with the founding affidavit.

16.1 It is not initialled at the foot of every page by either the applicant or the Commissioner of Oaths.

16.2 There is a discrepancy between the date and place at which the affidavit was deposed: the Commissioner's stamp states that the affidavit was deposed to on 27 July 2022 in Cambridge, Eastern Cape. The certification 'template' at the end of the affidavit is typed stating that the affidavit was deposed to on 26 July 2022 at Johannesburg.

[17] I was referred to the test in *S v Msibi*⁹ on whether there has been '*substantial compliance with the requirements*' of the Oaths Act.

[18] The reference to *S v Msibi* is instructive but not illustrative. Further consideration of the Oaths Act, the regulations and the case law favour the applicant:

18.1. The Oaths Act is silent on how any affidavit should be commissioned. The reference to it therefore does not take the respondents' case anywhere.

18.2. The Regulations Governing the Administering of an Oath or Affirmation¹⁰ (the regulations) are relevant. The affidavit provides that the applicant "*acknowledge[d] that he knows and understand the contents of this affidavit, had no objection to taking the oath, considered the oath binding on his conscience, and the regulations...having been fully complied with*". Regulations 1(1) and 2 are therefore complied with.

⁹ 1974 (4) 821 (T).

¹⁰ GNR 1258 of 21 July 1972.

18.3. The applicant signed the affidavit ostensibly in the presence of the commissioner. Regulation 3(1) is therefore complied with.

18.4. Below this, the commissioner (a police sergeant) signed, provided his designation and name, and provided the date and place of signature. Regulation 4 is therefore complied with.

[19] Every relevant provision of the regulations has been complied with in '*such a way as to give effect to the purpose of the legislator*'.¹¹ Courts regularly exercise their discretion to condone any non-compliance with the formalities of this legislation.¹² The discrepancy in date and place is clearly a clerical error, and not a substantial error. It is condoned.

[20] The Gauteng Provincial Division has condoned failure to initial every page, referring to the practice as '*desirable*' but not a requirement of the Regulations.¹³ In the above matter, the court made the following point:

'If there is doubt as to whether the details that appears on that certificate is not that of the commissioner of oaths, it is for the party who had the doubt to challenge and substantiate that.'¹⁴

[21] This omission is therefore also condoned, given that the applicant has not been legally represented in these proceedings, the affidavit was being commissioned at a police station and not before an attorney, and the respondents did not aver or submit that they had any doubt that this was the applicant's affidavit.

[22] The second point *in limine* is dismissed.

Background

MISA advert for chief civil engineers

¹¹ *S v Munn* 1973 (3) SA 734 (NC) at 737.

¹² *Ibid.* See more recently: *Van As N.O. and Others v Jacobs N.O. and Another* [2022] ZAGPPHC 928 at para 13.

¹³ *Mailula, Matsi Law Chambers* at paras 20 to 21.

¹⁴ *Ibid.*

- [23] During 2017, MISA advertised positions for chief civil engineers. The job advert requirements were:

‘An appropriate degree in Civil Engineering (B Eng/ BSc Eng/ BTech Eng) or relevant qualification, with six years’ post-qualification experience in Civil Engineering and registr[ation] as a professional Engineer/Engineering Technologist.’

- [24] Further core competencies were then listed under requirements. There was no requirement for a matric certificate or even matriculation.

- [25] As with all positions advertised through the Department of Public Works, the advert contained the following note:

‘[The application] should be accompanied by a comprehensive CV, ID and certified copies of qualifications... It is the applicant’s responsibility to have foreign qualifications evaluated by the South African Qualifications Authority... Incomplete applications... will not be considered.’

The applicant’s job application

- [26] The applicant submitted his job application on 27 September 2017. This included the completed Z83 form, his CV and supporting documents. It is common cause that the applicant did not submit a matric certificate with his job application and that he does not have one.

- [27] The applicant did, however submit: (a) a ‘Statement of Results’ for matric examinations issued by the South African Certification Council in December 1993; (b) a B Tech (Engineering Civil – Urban) certificate and a B Tech (Engineering Civil – Transportation) certificate awarded by the former Technikon Witwatersrand with effect from 2000; (c) a BSc Honours certificate in Applied Science: Transportation Planning awarded by the University of Pretoria in 2014; (d) a certificate of competency in Management of Civil Engineering Construction Processes in 2008; (e) a certificate of registration as a Professional Engineering Technologist with the Engineering Council of South Africa since 2009, and (f) a certificate showing that he is an elected member of the South African Institute of Civil Engineering since 2016.

[28] The applicant did not withhold any documentation in applying for the job.

Respondents' conduct in appointing the applicant

[29] Prior to appointing the applicant, the respondents outsourced pre-screening tasks and received the following:

29.1. A pre-employment screening memorandum from the Department of Co-Operative Governance dated 24 January 2018 which reflected criminal and credit records of applicants. The last paragraph of the memorandum states, *'The pre-employment screening is valid until a candidate is appointed. The appointed candidate should complete a Z204 form that must be forwarded to the Vetting Unit in order to conduct necessary vetting investigation, at the end of which relevant security clearance will be considered.'* SAQA was tasked with vetting qualifications.

29.2. A verification document compiled by SAQA (the SAQA report), dated 24 January 2018 which indicated that the applicant's tertiary qualifications had been verified but that the matric certificate could not be verified. At the head of the document, SAQA states, *'The rows indicating 'Yes' have been verified. Decisions concerning appointment rest with the client'* (own emphasis).

[30] These documents formed part of the respondents' arbitration bundle.

[31] On 7 March 2018, after the SAQA report was sent to MISA, the applicant received correspondence from MISA that his application for one of the chief civil engineer posts was successful (the appointment letter). This letter stated in bold, among other things:

'This appointment is provisional pending the positive outcome of pre-employment screening. The Department reserves the right to summarily terminate your employment should the results come back negative depending on the status.'

[32] The applicant then started working at MISA on 4 April 2018.

[33] Evidently, the respondents provisionally appointed the applicant to his post *after* receiving information from SAQA that his matric certificate could not be found and his matric status could not be verified. The respondents still allowed him to begin working at MISA. This was at their discretion, with all information before them.

[34] 14 months into his employment, the applicant received a letter dated 6 June 2019 from MISA's human resources department (HR) (the probation letter). The letter stated:

'It is a pleasure to inform you that your probationary appointment in accordance with section 13(2) of the Public Service Act, 1994 as amended, read with Regulation 68(1) of the Public Service Regulations, 2016, has been confirmed with effect from 25 April 2019.

Please take note that the changing of your salary payment date to the fifteenth of each month will become effective from 15 June 2019.'

[35] The wording of the letter suggested to the applicant that he was being placed on probation over a year into his employment. The respondent had no submissions on this point by the applicant, even though the legislation makes it clear that the applicant was being informed that he was no longer on probation. Section 13(2) of the Public Service Act provides:

'After the completion of a probationary period... an executive authority shall confirm the probationary appointment if the employee concerned has –

- (a) performed at least satisfactorily during the period; and
- (b) complied with all the conditions to which his or her appointment was subject.' (Own emphasis)

[36] The probation letter was therefore telling the applicant that his probation had come to an end, and implied in this, that his performance during the probationary period was satisfactory and, significantly, that he had complied with all the conditions to which his appointment was subject.

Matric certificate inquiries

- [37] The respondents claim that a subsequent internal audit alerted them that the applicant *'did not submit the matric certificate he claimed to have'*. The internal audit report did not form part of the record, and the respondents do not provide its date. This is irrelevant in any event: the respondents did not need an internal audit into the applicant's school qualifications in 2019. They had the SAQA verification document from 24 January 2018 which ought to have alerted them to the shortcoming. They also had the applicant's job application from which it was plain that he did not have a matric certificate.
- [38] It appears from the record that, starting in September 2019, MISA's HR began making inquiries into whether the applicant held a matric certificate. The official correspondence from HR, according to the record, was sent to the applicant on 13 September 2019 (the HR letter).
- [39] The applicant's undisputed evidence was that he is a South African citizen, and that in his early childhood, he was taken to stay in Zimbabwe with family friends due to the political instability in South Africa. In Zimbabwe, he studied until Grade 11 (Standard 9), completing his O-levels. This was in 1991. He returned to South Africa in 1992 through the United National Voluntary Repatriation Programme. In 1993, he studied Grade 12 (Standard 10 or matric) at a high school in Johannesburg. For his matric exams, he registered for English (first language), Afrikaans (second language) and five other subjects. He ultimately did not write Afrikaans. He did not say why, save for stating that the only second language in which he was competent because of his time in Zimbabwe was Shona. He is recorded as having been absent from the exam. He wrote the other six subjects and passed each of them.
- [40] The applicant commenced his efforts to secure his matric certificate. The record shows the following written correspondence:
- 40.1 On 10 October 2019, the applicant wrote to uMalusi requesting assistance. In it, he explained his childhood schooling and the following:

'It recently came to my attention that I am not in possession of a matric senior certificate, but a statement of results. Upon enquiry with

the Department of Education, they indicated that I couldn't get my matric senior certificate because of the outstanding alternative language which I didn't do. They indicated that is I can write that alternative language and pass it, then and only then can I get the matric senior certificate, probably with exemption.

My challenge is that at work they want me to provide them with a matric senior certificate or its equivalen[t], which I now realise that I don't have, which is likely to expose [me] to the risk of losing my employment. I am therefore requesting your intervention and assistance in this regard...

40.2 On 11 October 2019, uMalusi respondent informing the applicant that if it was indeed the case that he completed his O-levels and that he arrived in South Africa within five years of sitting his matric exams, he qualified for the status of an *'immigrant candidate'*. UMalusi then advised the applicant to provide proof of the above two facts, upon which he could *'apply for the re-issuing of [his] certificate to reflect immigrant status'*. The correspondence further stated, *'With the results achieved in November 1993, you could qualify for the Senior Certificate if you were registered as an immigrant candidate'*.

[41] On 18 November 2019, the CEO of MISA wrote to the application recording the contents of the HR letter. The CEO also recorded that the applicant informed HR that his matric certificate had not been issued because he *'only enrolled and passed one vernacular'*, and that he would liaise with the Department of Education in Zimbabwe to request them to reissue his O-levels certificate so that he could submit these to SAQA.

[42] On 28 November 2019, the applicant wrote back to uMalusi, providing proof of his O-levels. On 29 November 2019, he had a call with uMalusi and he was asked to then contact the school (in Johannesburg) where he wrote matric *'to ask for copies of the documentations that were submitted when they registered [him] for the examination. These documentations must be submitted to the Department of Education who will then request a re-issue of [his] certificate with the correct status'*.

[43] The applicant provided no further information of his engagements with uMalusi or the Department of Basic Education.

[44] On 16 March 2020, the CEO of MISA wrote to the applicant dismissing him (the dismissal letter). The dismissal letter referred to MISA's earlier letter to the applicant dated 18 November 2019, in which MISA gave him until 28 February 2020 to submit his matric certificate. In the dismissal letter, the CEO records:

'To date you have failed to submit matric certificate which means your employment contract was secured by misrepresentation.

As it is stated clearly in the appointment letter, your appointment was provisional pending the positive outcome of the pre-employment screening, which includes the verification of qualifications. The timeframe that was given to you for representations has now expired.

Kindly take notice that your provisional appointment is hereby terminated with immediate effect for the following reason:

(1) Your failed to submit your matric certificate.

Your final appointment would only be possible if you meet the above conditions. In the circumstances kindly return all MISA equipment in your possession and custody and control.' (sic)

[45] The applicant has still not secured his matric certificate. The legal question is whether, in the circumstances, the reasons given in the dismissal letter (not having a matric certificate and misrepresenting this to the employer) were fair reasons for MISA to dismiss the applicant.

[46] The arbitration proceeded by way of a stated case, which included written submissions and documents.

[47] The Commissioner began his analysis by stating, '*I have to determine [whether] the applicant is in possession of a valid matric certificate or not: in line with the requirements of the Department of Education as per the respondent's requirement*' (sic). He proceeded immediately to find:

'Based on the evidence before [me], it is my finding that the applicant does not have the required matric certificate in line with the requirements of the Department of Education as per the respondent's requirement. It is my finding that the above dismissal was substantively fair.'

[48] This is the full extent of the Commissioner's inquiry into substantive fairness.

[49] The Commissioner then found that the respondent '*deviated from its disciplinary code*' which required that a disciplinary hearing be conducted prior to a dismissal. On this basis, he found that the dismissal was procedurally unfair. He found an award of two months of the applicant's salary to be just and equitable compensation.

Review grounds

Procedural fairness

[50] The applicant seeks to review the relief awarded following the finding, on procedural fairness. The respondents have not applied to cross-review the finding of procedural unfairness and so I deal only with whether the amount of compensation awarded was unreasonable and should be interfered with.

[51] The applicant argues:

51.1 The Commissioner '*misdirected himself by failing to give due weight and/or ignoring relevant evidence relating to the conduct of the [Department] illegal conduct when dismissing the applicant*' (sic).

51.2 The respondents '*should have at least investigated [his] conduct if any and advised [him] of the allegations against [him]*' and that he '*should have been given the opportunity to respond to the allegations or at least to make a form of representations before [his] employment was abruptly terminated.*'

[52] The Constitutional Court had held that '[a]n award would meet this requirement [of reasonableness] if there are reasons supporting it.'¹⁵ In

¹⁵ *Duncanmec (Pty) Ltd v Gaylard NO & others* (2018) 39 ILJ 2633 (CC); [2018] 12 BLLR 1137 (CC) at para 43.

awarding two months salary as compensation, the Commissioner states that this is based on the applicant's length of service, which I presume the Commissioner regarded as relatively short. There is no evidence of other factors being considered. The applicant pleaded that the way he was dismissed was not considered, and that it ought to have been considered. It is correct that it is not apparent from the award that the Commissioner had any regard to the applicant's summary dismissal.

[53] For this reason, I find that a different award of compensation could have been made by another decision-maker, on the information available, and properly directing himself or herself to the legal principles on determining the amount of compensation in cases of procedural fairness.

[54] I address the amount of compensation under the heading of relief.

Substantive unfairness

[55] The first irregularity alleged is that the Commissioner failed to apply his mind and so misconstrued the inquiry that he was required to undertake based on the issues in dispute. As a result, the applicant avers that the Commissioner's decision was completely unreasonable and '*not understandable in law*'.

[56] The Commissioner explicitly stated that the question before him was whether the applicant possessed a matric certificate. The Commissioner found that the applicant did not have a matric certificate and that his dismissal was therefore fair.

[57] The Commissioner committed a gross irregularity because this was patently not the question before him. It was common cause that the applicant did not have a matric certificate.

[58] This is the archetypal case of misconceiving the nature of the inquiry. Myburgh and Bosch have argued that misconception of the nature of the inquiry warrants a setting aside of the award without any consideration of the reasonableness of the outcome.¹⁶ I agree that unreasonableness follows, as it

¹⁶ A Myburgh and C Bosch *Reviews in the Labour Court* at 93 – 94.

does in cases of material errors of law. The Commissioner's decision can only be a decision that no reasonable decision-maker would make, because a reasonable decision-maker would understand the nature of the dispute, the common cause facts, and the issue that he is required to decide.

- [59] The respondents added a further aspect to their argument concerning the applicant not having a matric certificate. The respondents argued that the matric certificate is an indication of passing matric and of the ability to obtain tertiary qualifications and it was therefore an implied requirement for the job. This was not pleaded, but I deal with it in any event.
- [60] The first problem for the respondents' 'foundational argument' is that it bears the onus of proving good reason for the dismissal. They therefore cannot accept the applicant's tertiary qualifications, as they expressly do, and then argue that in the absence of a matric certificate being produced, the above qualifications crumble.¹⁷ If the respondents wanted to make this foundational argument, they ought to have either investigated further or at least sought to cast doubt on or dispute the validity of the applicants' tertiary qualifications. They did not and were candid about this.
- [61] Put differently, if the respondents contend that the applicant lied in claiming to have passed matric, it must follow that they would at least question his tertiary qualifications and not expressly and unconditionally accept them. The 'foundational' argument therefore, does not move beyond being theoretical. The position might have been different had the respondents sought to cast doubt on the applicant's tertiary qualifications, instead of expressly stating that they were not challenging these.
- [62] Although the respondents did not substantiate their proposition that matric was a foundation for tertiary qualifications, making the requirement of a matric certificate 'obvious' or 'implied', there is case law that, on the face of it, supports this argument. It is unfortunate that the respondents, despite being fully represented, did not assist the Court.

¹⁷ In principle, this is incorrect: university and technical college have provisions for mature students, who may be permitted to study based on experience and not on passing matric, or passing matric with exemption. This was not, however, the applicant's pleaded case.

62.1. In *Kloppers v N Khumalo N.O and Others (Kloppers)*,¹⁸ van Niekerk J (as he then was) held:

‘Although the minimum qualification for the post into which the applicant applied to be promoted was a history qualification, it was necessary for the purposes of the application to submit a matric certificate which in all probability, is the reason why the applicant submitted the incorrect certificate rather than his statement of symbols.’

62.2. In *Hlope v Head of Department, Department of Education, KwaZulu-Natal & others (Hlope)*,¹⁹ Khuzwayo AJ rejected the argument that a matric certificate was not a requirement for the post and held that ‘*all candidates who applied for various posts were required to attach their qualification certificates on their applications. This was one of the standard requirements for a fully completed application form.*’ The job applicant in *Hlope* did not attach her matric certificate to her application.

[63] Even if we accept that a matric certificate may be an implied requirement for a job in some cases, the above cases are distinguishable from the applicant’s case for several reasons.

63.1. In *Kloppers v N Khumalo N.O and Others*, the employee worked his way through the ranks of the state service, and until 2017, the verification exercises did not “*raise any concern about the integrity of the applicant’s matric certificate*” that he had submitted when he was first appointed as a technician in 1997. In 2017, when the applicant applied for a promotion, the state employer found out that the matric certificate originally submitted was a forgery. It charged the employee with fraud and dismissed him.²⁰ The applicant in this case is not alleged to have committed a forgery. Further, the SAQA report raised concerns about the applicant’s matric qualifications and brought this to the

¹⁸ [2022] ZALCD 42 at para 13.

¹⁹ (2024) 45 ILJ 805 (LC); [2024] ZALCD 4 at paras 33 – 36.

²⁰ *Kloppers supra* at para 13.

attention of the respondents. They appointed the applicant anyway, whether intentionally or negligently. The employee's conduct is not comparable.

63.2. In *Hlope*, the employee's application was rejected at the outset because of her failure to submit her matric certificate. She was not appointed and the employer did not seek to backtrack later. In this case, the respondents appointed the applicant despite his own application containing only a statement of results and not a matric certificate, and the SAQA report. In the present case, the respondents were either negligent, intentionally ignored the documents before them, appointed the applicant and now want to backtrack through, of all things, a summary dismissal. The facts are not comparable.

[64] To summarise, this case is distinguishable for the respondents' own conduct in appointing the applicant suggest that the matric certificate was not required in this case, alternatively that *the respondents made the error* in not requiring it: when appointing the applicant provisionally on 7 March 2018, having him commence work on 4 April 2018, and deciding that he has passed his probation period on 6 June 2019 (which included an assessment into whether he had '*complied with all the conditions to which his... appointment was subject*'), the respondents had been made aware by SAQA that his matric qualifications could not be verified. They appointed him anyway.

[65] Two possible inferences can be drawn from the respondents' conduct. Either the respondents did not consider a matric pass or matric certificate a compulsory requirement for appointment to the post, or the respondents negligently or intentionally disregarded the SAQA report. Neither is a good reason for dismissal because it concerns the employer's error, and not any misconduct by the employee. The respondents in this case did not even seek to correct their error shortly after the applicant's appointment, instead allowing

him to work for over a year in his position, and confirming that he had passed the one-year probationary period.²¹

- [66] Given that the applicant's employment, on balance, appears to have been an error, the respondents were supposed to review their own decision, and not resort to self-help to cure it. The Constitutional Court in *Khumalo & another v Member of the Executive Council for Education: KwaZulu-Natal (Khumalo)* has endorsed section 158(1)(h) of the LRA as the mechanism for correcting irregular appointments, and has emphasised that these reviews are obligations on an organ of state:

'As bearers of this duty [to respect, protect, promote and fulfil the rights in the Bill of Rights], and in performing their functions in the public interest, public functionaries must, where faced with an irregularity in the public administration, in the context of employment or otherwise, seek to redress it. This is the responsibility carried by those in the public sector as part of the privilege of serving the citizenry who invest their trust and taxes in the public administration.'²²

- [67] Should the respondents seek to review the applicant's appointment now, they would, despite the approach taken in *State Information Technology Agency SOC Limited v Gijima Holdings (Pty) Limited*,²³ need to contend with the delay since the appointment was made²⁴ to have the application heard, and to obtain the relief sought (removing the applicant from his position).
- [68] Having found that, in these unique circumstances, it was not a good reason to dismiss the applicant for not having a matric certificate, I turn now to whether

²¹ This factor distinguishes the present case from *Nogcantsi v Mquma Local Municipality & others* (2017) 38 ILJ 595 (LAC); [2017] 4 BLLR 358 (LAC) where the LAC upheld a dismissal during the probation period, in terms of an automatic termination clause following the outcome of a screening process.

²² (2014) 35 ILJ 613 (CC); 2014 (3) BCLR 333 (CC) at paras 30 – 37. See also: para 45.

²³ *State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd* 2018 (2) SA 23 (CC); [2017] ZACC 40.

²⁴ *Premier, Eastern Cape Province & another v Tikayo* (2025) 46 ILJ 628 (LC); [2024] ZALCPE 47 at para 33. See also: the discussion on what might constitute an unreasonable delay in legality reviews: Charles Green and Martin Fourie-Viljoen 'Pathways to review available to an organ of state acting in the public interest: the unintended loophole of the Gijima "exceptions"' *TSAR* (2024) Vol 3 at 299 – 300.

he misrepresented having matriculated, the second professed reason for his dismissal.

- [69] Because the Commissioner misconceived of the nature of the inquiry that he was required to undertake, he did not engage the respondents' second justification for dismissing the applicant – that the applicant had allegedly misrepresented his matric qualifications throughout the recruitment process.
- [70] If the applicant committed misrepresentation, it will generally²⁵ follow that he was dismissed for good reason because he sought to deceive his employer on his qualifications, and persisted in doing so, which goes to the heart of trust in the employment relationship.²⁶ There are two broad sets of cases concerning the misrepresentation of qualifications: employees who misrepresent by submitting fraudulent documents,²⁷ and those who misrepresent by making statements in their CVs or job application forms that are not supported by the documents.²⁸ It is the second group of cases that is relevant to the present case. It is established that intention to misrepresent, deceive or defraud is required. Innocent misrepresentations do not constitute misconduct generally, and if they do, they do not warrant dismissal. I deal with the applicable case law later.
- [71] The question here is whether the applicant, in writing, that he had matriculated, made an intentional misrepresentation or an innocent misrepresentation.
- [72] The LAC and Labour Court's determinations regarding the element of intention clarify that it is fraudulent or dishonest intention that justifies dismissal:

²⁵ *Department of Home Affairs & another v Ndlovu & others* (2014) 35 ILJ 3340 (LAC); [2014] ZALAC 11 at para 18: 'It is obligatory that an employer should produce such evidence to justify a dismissal unless of course that conclusion of a broken employment relationship is apparent from the nature of the offence and/or the circumstances of the dismissal.'

²⁶ See: *Boss Logistics v Phopi & Others* (2010) 31 ILJ 1644 (LC); [2010] 5 BLLR 525 (LC) (*Boss Logistics*) 1652 E – G; *Rainbow Farms (Pty) Ltd v Dorasamy NO & others (Rainbow Farms)* (2014) 35 ILJ 3462 (LC) at para 13; *Stellenbosch Municipality v SA Local Government Bargaining Council & others (Stellenbosch Municipality)* (2022) 43 ILJ 2100 (LC); [2022] 11 BLLR 1056 (LC) at para 25; *G4S Secure Solutions (SA) (Pty) Ltd v Ruggiero NO & others* (2017) 38 ILJ 881 (LAC); [2016] ZALAC 55 at para 30.

²⁷ *Stellenbosch Municipality supra*; *Kloppers N.O supra*.

²⁸ *Rainbow Farms supra*; *Boss Logistics supra*.

72.1 The defence of mistake (believing that you held the qualification) has been rejected where the employee did not admit to the alleged mistake at the *'first and earliest opportunity'*.²⁹

72.2 The defence of the employer misunderstanding the CV has been rejected where it could be inferred that the employee knew what they were doing when listing their qualifications,³⁰ and had previously corrected their qualification listings when errors were pointed out to them.³¹

[73] The respondents' case for misrepresentation was that the applicant wrote on the Z83 form, under highest (school) qualification obtained, *'Matriculation – 1993'*. In his CV, he also wrote, *'Matriculation'*. The respondent therefore argued that the applicant misrepresented his qualifications. I was referred to the Dictionary of South African English for the contention that the applicant misrepresented his matric qualifications because 'matriculation' means passing matric.

[74] In this case, the applicant provided a range of supporting documents, among them, a document issued by the Department of Education for *KwaZulu-Natal dated 2017* (the KZN document). The KZN document set out the applicant's 'calculation of aggregate' for his matric exams for Vector High School in Braamfontein. The respondents did not take issue with this document. The respondents also did not refer to the following contents of the KZN document in support of their claim that the applicant did not pass matric and was therefore misrepresenting to his employer when he stated on his job application documents that he 'matriculated':

'Remarks: The candidate failed the Senior Certificate examination. Reasons for failure are: [blank].' (Own emphasis)

²⁹ *Lesedi Local Municipality v Mphole & others* (2023) 44 ILJ 1967 (LC); [2023] 9 BLLR 939 (LC) at para 38.

³⁰ *Department of Home Affairs & Another v Ndlovu & Others* (2014) 35 ILJ 3340 (LAC); [2014] ZALAC 11 at para 16.

³¹ *Rainbow Farms supra* at paras 14 – 16.

[75] The applicant's conduct is comparable to the conduct examined in *Austin-Day v ABSA Bank Ltd and Others*,³² where an employee, unsolicited, did not merely admit her misconduct, but paraded it, believing that she was not in the wrong. The LAC found that dishonesty had not been proved on balance, considering Ms Austin-Day's openness about her actions:

'The respondent had to, in order to be successful in showing that it acted substantively fair in dismissing the applicant based on dishonesty must show that the applicant intended by her actions to be dishonest. The facts of the case before me does not support a finding of dishonesty because the applicant acted openly by depositing the moneys over the counter with her name as depositor and in a manner seeking approval from Mr Vallentyn for her innovative thoughts and actions divulged to him. It cannot be said that a person under these circumstances had the intention to be dishonest.'³³

[76] The KZN document assists the respondent in proving misrepresentation of some kind, and yet the applicant submitted it, and referred the Court to it. One inference that may be drawn from the submission of this evidence is that the the applicant genuinely held a mistaken belief that he passed matric. His repeated reference to this, together with his statement of results, suggests that he was negligent or even innocent misrepresentation, and not a fraudulent (dishonest) misrepresentation that destroys the trust in an employment relationship.

[77] On the other hand, the applicant puts himself out to be an engineer, and was employed as a chief civil engineer for the province. He is not merely literate. He is supposed to be highly educated and ought to have understood that the documents which he submitted and on which he relied were not documents that proved that he passed matric.³⁴ The KZN document expressly stated that he did not pass.

[78] I do not know if the KZN document is a valid document. Had a disciplinary hearing been held, the applicant's documents could also have been tested there. His understanding of the documents could also have been tested, and

³² [2022] 6 BLLR 514 (LAC); [2022] ZALAC 6.

³³ *Ibid* at para 18.

³⁴ See: *Mothiba v Exxaro Coal (Pty) Ltd t/a Grootgeluk Coal Mine* (2021) 42 ILJ 1910 (LAC) at para 8.

his credibility as a witness. Instead, there was no disciplinary hearing and the arbitration proceeded by way of a stated case. In the absence of witness testimony, I am not well-placed to balance the probabilities and determine if the misrepresentation was fraudulent and justified dismissal, or if it was innocent. If it was innocent, that would still raise serious concerns about the applicant's suitability for the position of chief civil engineer.

[79] I cannot, however, allow the fact that it appears from the documentation before me, which was the very same documentation both in the job application process and in the arbitration, to detract from: (a) the onus on the employer to prove that the dismissal for misrepresentation was fair, and (b) in relation to this, that the applicant candidly put forward all these documents. I do not know what, if anything, went on behind the scenes of the recruitment and appointment process, and my inquiry is limited to fair reason for the dismissal.

[80] In the circumstances, this dismissal was not fair: an employee cannot be dismissed for misrepresenting his qualifications when he put forward all documents to the employer, was appointed after a verification exercise conducted by the employer, served out a probationary period successfully, an employer later recognised that the appointment was incorrectly made, and the employer cannot demonstrate an intention to act dishonestly.

[81] In *Rainbow Farms*, Cele J held:

'It is not a defence to an allegation of fraud that the person to whom the representation was being made, could have by the exercise of reasonable care, discovered the truth of the misrepresentation and ought never to have been duped by it.'³⁵

[82] This does not apply here because the applicant was not '*duping*' anyone, and I have found that this was not a fraudulent misrepresentation. Instead, the applicant acted openly with the respondents, the Council and the Court, even to his detriment.

³⁵ *Rainbow Farms supra* at para 17.

[83] This is a case that should have been brought to the Labour Court by the employer in terms of section 158(1)(h) of the LRA.

Conclusion

[84] I have found that –

- 84.1. there is a basis pleaded for me to revisit the Commissioner's award of the amount of compensation for procedural unfairness;
- 84.2. dismissing the applicant for not having a matric certificate was not a good reason for the dismissal in the circumstances;
- 84.3. the employer failed to show fraudulent misrepresentation, which would warrant a dismissal; but despite this,
- 84.4. there is evidence on the record, albeit not picked up by the respondents, that calls the applicant's suitability for the position into question.

[85] This fourth finding informs the relief.

Relief

Remittal to Council inappropriate

[86] There are factual similarities with the first case in *Khumalo*, where Mr Khumalo was working in his position, that the MEC had not raised performance issues and that '*he bears no responsibility [for his appointment] but for having the boldness to apply for a position for which he possibly did not qualify*'.³⁶ Three years into Mr Khumalo's appointment to the position in question, a task team found that Mr Khumalo did not meet the minimum requirements on supervisory experience for appointment to the post, and that

³⁶ *Khumalo supra* at para 55.

he ought never to have been shortlisted and interviewed, let alone appointed. The task team also found irregularities in the appointment process.³⁷

- [87] The Constitutional Court did not accept Mr Khumalo's arguments and found that he indeed failed to meet the minimum supervisory requirements for the post, and found that his appointment was unfair.³⁸ The Constitutional Court, however, declined to set aside the appointment because the task team report and the papers filed in the Labour Court did not contain reasons for the Department's decision to depart from the minimum requirements and appoint Mr Khumalo.³⁹ The Constitutional Court therefore found that it could not make a finding in terms of section 158(1)(h) or the principle of legality. It left Mr Khumalo in his position.
- [88] In this case, the applicant was appointed in April 2018. He was summarily dismissed in September 2019. The CCMA handed down its award in May 2020. The respondents have acted unfairly, and possibly unlawfully.
- [89] I must, however, consider that the documentation on record casts doubt not merely on the applicant's supervisory experience (as was the case with Mr Khumalo), but on all his technical qualifications for the position to which he was appointed.
- [90] The question is whether it is worth remitting this matter to the Council for oral evidence on the question of whether the applicant misrepresented his qualifications by stating that he matriculated. Based on *Khumalo* and given the respondents' lackadaisical approach to the disciplinary process, the arbitration and this review, I cannot see how a remittal to oral evidence on this point would assist. Similarly to the Constitutional Court in *Khumalo*, I must accept that I am constrained by the passage of time and the information before me.

Reinstatement or compensation

³⁷ *Khumalo supra* at para 8.

³⁸ *Khumalo supra* at para 60.

³⁹ *Khumalo supra* at para 67.

[91] Recently, in *Bojosinyane v Ditsobotla Local Municipality & others*,⁴⁰ Makhura J considered an urgent application against a municipality's summary termination of an applicant's fixed-term contract. The municipality's reason for terminating the applicant's employment was that the appointment contravened the Municipal Systems Act. Makhura J held:

'The Municipality decided that it could correct this decision by passing a resolution. It passed a resolution to place the applicant on special leave pending the determination of the review application filed by the fourth respondent. The applicant sought urgently to challenge this decision. Confronted by this urgent application, the municipality elected to constitute an urgent special meeting on 30 January 2025. This special meeting passed a resolution (1) not oppose the application, (2) to lift the special leave and (3) to terminate the applicant's employment contract with immediate effect. The courts have pronounced that this conduct is not allowed. The decision to set aside the appointment can only be taken by the High Court or this court on review because only a court of law is the final arbiter on legality issues. The municipality was therefore obliged to follow the correct legal process of applying to review and set aside the appointment. It cannot resort to self-help. Its decision to correct the wrong is therefore unlawful and void.'⁴¹

[92] In *Bojosinyane*, the Mr Bojosinyane approached the Labour Court pleading unlawfulness of his summary termination. The termination, once found to have been unlawful, was declared void.⁴² The applicant in this matter pleaded a case unfairness. The remedies should relate to unfairness.

[93] Another difference is that in *Bojosinyane*, the Labour Court was not faced with any allegations of misconduct on the part of the applicant. In this case, the record includes a document submitted by the applicant which, among other things, states that he did not pass matric. This raises further questions regarding his tertiary qualifications, although the respondents, as part of their generally lackadaisical approach to this very serious matter, chose not to contest these qualifications.

⁴⁰ *Bojosinyane v Ditsobotla Local Municipality and Others (Bojosinyane)* (2025) 46 ILJ 1350 (LC); [2025] ZALCJHB 222.

⁴¹ *Bojosinyane supra* at para 28.

⁴² See also: *Chubisi v South African Broadcasting Corporation (SOC) Ltd and Others* [2020] ZALCJHB 218; (2021) 42 ILJ 395 (LC).

[94] Zondo J set out the sequence of the inquiry into relief:

‘Once the Labour Court or an arbitrator has found a dismissal unfair, it or he is obliged to consider which one of the remedies listed in s 193(1) is appropriate, having regard to the meaning of s 193(2). Considering both the provisions of s 193(1) and s 193(2) is important because one cannot adopt the attitude that dismissal is unfair, therefore, reinstatement must be ordered. The Labour Court or an arbitrator should carefully consider the options of remedies in s 193(1) as well as the effect of the provisions of s 193(2) before deciding on an appropriate remedy. A failure to have regard to the provisions of s 193(1) and (2) may lead to the court or arbitrator granting an award of reinstatement in a case in which that remedy is precluded by s 193(2).’⁴³

[95] Reinstatement is the primary remedy where a dismissal has been substantively unfair, but there is more to consider.

[96] Considering the evidence that the applicant openly submitted, which shows that he did not pass matric, it would not be reasonably practicable, or desirable, to reinstate the applicant to the position of chief civil engineer.⁴⁴ The particular the nature of the job must be a consideration.⁴⁵ In this case, it is self-evident that the applicants educational qualifications are reasonably linked to performance of the work of the chief civil engineer of for a province.⁴⁶

[97] For this reason, in terms of section 193(2)(c) of the LRA, compensation, and not reinstatement, would be the appropriate remedy.

Determining the amount of compensation

[98] Section 194(1) regulates the determination of compensation:

‘The compensation awarded to an employee whose dismissal is found to be unfair either because the employer did not prove that the reason for dismissal was a fair reason relating to the employee’s conduct or capacity or the employer’s operational requirements or the employer did not follow a fair

⁴³ *Toyota SA Motors (Pty) Ltd v Commission for Conciliation, Mediation & Arbitration & others* (2016) 37 ILJ 313 (CC); 2016 (3) BCLR 374 (CC) at para 135. This was a minority judgment, but it does not concern an issue of contention between the majority and minority in this case.

⁴⁴ Section 193(2)(c) of the LRA.

⁴⁵ This distinguishes the applicant’s case from, for example, that of correctional services offices seeking salary grade promotions, see: *Public Service Association on behalf of Van Zyl & others and Department of Correctional Services* (2008) 29 ILJ 215 (BCA).

⁴⁶ See: *Lagadien v University of Cape Town* (2000) 21 ILJ 2469 (LC); [2001] 1 BLLR 76 (LAC).

procedure, or both, must be just and equitable in all the circumstances, but may not be more than the equivalent of 12 months' remuneration calculated at the employee's rate of remuneration on the date of the dismissal.'

[99] An initial concern was whether the matter ought to be remitted to the Council for the hearing of evidence so that compensation can be determined. Two appellate decisions assist, however. First, Zondo JP referred to the following factors, among others, when determining whether to award compensation:

- '(e) The consequences to the parties if compensation is awarded and the consequences to the parties if compensation is not awarded.
- (f) The need for the courts, generally speaking, to provide a remedy where a wrong has been committed against a party to litigation but also the need to acknowledge that there are cases where no remedy should be provided despite a wrong having been committed even though these should not be frequent.
- (g) In so far as the employee may have done something wrong which gave rise to his dismissal but which has been found not to have been sufficient to warrant dismissal, the impact of such conduct of the employee upon the employer or its operations or business.
- (h) Any conduct by either party that promotes or undermines any of the objects of the Act, for example, effective resolution of disputes.'⁴⁷

[100] Later in *South African Revenue Service v Commission for Conciliation, Mediation and Arbitration & Others (Kruger)*,⁴⁸ the Constitutional Court held that 'one of the key factors' in determining if compensation has to be paid, and to what extent, is –

'the need to ensure that employers are not inadvertently encouraged by the non-payment of compensation to adopt a shotgun approach of dismissing employees without affording them the opportunity to be heard. Employees are ordinarily vulnerable because, unlike employers, they do not often have the resources necessary to vindicate their rights by prosecuting cases all the way up to this Court. Condoning the flouting of laws that govern the fate of

⁴⁷ *Kemp t/a Centralmed v Rawlins* (2009) 30 ILJ 2677 (LAC) (*Kemp*) at para 20.

⁴⁸ (2017) 38 ILJ 97 (CC).

people's livelihood is a matter so serious that it always requires greater sensitivity and care.'⁴⁹

[101] In this case, the Constitutional Court was concerned purely with the relief granted, the employer having, the day before the hearing, abandoned its challenge to the Commissioner's finding that the dismissal was substantively unfair. On the premise that the dismissal was substantively unfair, and despite the egregious conduct of the employee in this case, the Court awarded six months' compensation based on the following:

101.1. The extent of the deviation from disciplinary procedures.

101.2. That the effects of a dismissal are so serious that 'a breach of the relevant regulatory framework ought generally to be viewed in a serious light'.

101.3. The employer was not against paying compensation.

101.4. Despite being better resourced than the employee, the employer *'floated from one blunder to another thus causing Mr Kruger or his sponsors to be financially burdened through litigation, when this could have been avoided.'*⁵⁰

[102] Bearing in mind the factors set out above, there is evidence for a just and equitable determination on the amount of compensation.

[103] First, the extent of the deviation from procedure, by a government department, was so severe in this case, and unwarranted. There were other options, such as suspension, if the respondents did not want the applicant in the workplace during a disciplinary process.

[104] Second, even after committing this procedural unfairness, when the applicant challenged his dismissal, the respondents approached the case with so little interest that points appearing from the record were not taken up, which would have assisted the Court. They did not consider or point the Court to any

⁴⁹ *Kruger supra* at para 52.

⁵⁰ *Kruger supra* at paras 52 and 57.

relevant case law on the pertinent issues in the case, despite their being a great deal of case law.

- [105] In doing so, the respondents have failed in their responsibilities to the rule of law as organs of state, failed to assist the Court as well-resourced litigants, and undermined the principles for dispute resolution set out in the LRA. They have not tendered a higher amount in compensation, or conceded that they failed to act in accordance with the rule of law and the mechanisms provided for in the LRA when an organ of state errs in an employment matter.
- [106] The Constitutional Court's concerns of encouraging employers to take 'a *shotgun approach*' is also a consideration in this matter, given that the respondents maintained throughout that they were entitled to act as they have done.
- [107] This must be balanced this against the fact that the record reflects that the applicant did not pass matric, that he did not plead that he obtained his tertiary qualifications as a mature student, and that academic and professional qualifications are essential to the job he was employed to do. We will of course, never know why (a) the respondents appointed the applicant to the post, given all the documentation that was before them at the outset of the appointment process; (b) they allowed him to serve over a year in the post, and then (c) why they hastily tried to make his appointment go away through an unfair dismissal process.
- [108] It is fair to replace the Commissioner's award of compensation for procedural unfairness with compensation equal to four months' remuneration to the Applicants. It is further fair to award the applicant compensation equal to six months' remuneration for the substantive unfairness of the dismissal.
- [109] The maximum award of compensation is not appropriate given that the applicant ultimately does not have a matric certificate and should never have been appointed to this post. A lower amount of compensation would amount to a slap on the wrist for government agencies and departments who side-step their obligations in terms of the Constitution, the Public Service Act, the principles in *Gijima*, and the mechanism provided for them in section 158 of

the LRA. The impact on an employee dismissed in the way that the applicant was would also not be addressed by a lower amount.

Costs

[110] The applicant is self-represented and has indicated that he has not paid for legal representation or advice in these proceedings. He has, however, paid disbursements, including in relation to the record. Given that this matter proceeded as a stated case, the record is short, and the preparation of a bill of costs and its taxation would do little to assist the applicant, on a cost-benefit analysis. Further, the respondents were defending an award in their favour. For these reasons, costs are not appropriate.

Order

1. The review application is granted to the extent set out in paragraphs 2 to 4 of this order.
2. The arbitration award dated 20 May 2022 under case number GPBC 592/2020 is set aside, save in respect of the finding that the applicant's dismissal was procedurally unfair.
3. The finding that the applicant's dismissal was substantively fair is substituted as follows:

 'The applicant's dismissal was substantively unfair.'
4. The award of two months' compensation is substituted as follows:

 'The applicant is awarded compensation equal to ten months' remuneration at the time of his dismissal.'
5. There is no order as to costs.

B. Ramji

Acting Judge of the Labour Court of South Africa

LABOUR COURT

Appearances:

For the Applicant: Self-represented

For the Respondent: Adv M Rasivhetshele

Instructed by: The State Attorney (Pretoria)

LABOUR COURT