



- (1) Reportable: No
(2) Of interest to other Judges: No

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Case no: D1321/2018

In the matter between:

PSA obo NADASEN GOVENDER

Applicant

and

DEPARTMENT OF TRANSPORT – KZN

First Respondent

THE OFFICE OF THE PREMIER – KZN

Second Respondent

Heard: 7 August 2025

Delivered: This judgment was handed down electronically by circulation to the parties and / or their legal representatives by email. The date and time for handing-down is deemed 14h00 on 2 March 2026

JUDGMENT

ALLEN-YAMAN J

Introduction

[1] The applicant sought an order in the following terms,

- ‘1.1 A declaratory order compelling the First Respondent to approve / finalize the Applicant’s job evaluation retrospectively for his current post of Deputy Director (Financial Management).*
- 1.2 The First Respondent is ordered to pay the costs of the application provided that if any of the other Respondents oppose the Application then it shall be requested that such Respondent(s) be ordered to pay such costs jointly and severally with the First Respondent.*
- 1.3 Further and / or alternative relief.’*

[2] Despite the ambiguity of the order sought, it was apparent that the applicant sought an order compelling the first respondent to take the action specified and that no declaratory relief was in fact required to be granted.

[3] The first respondent, referred to herein as the DOT, opposed the application.

Background

[4] Employed by the DOT in his capacity as Regional Financial Manager, in 2009 the applicant became aware that job evaluations had been conducted for the posts of Deputy and Assistant Managers in the DOT’s Corporate Services Department, the result of which had been the upgrading of the posts in question by one level. Aggrieved by the fact that his own post had not been similarly evaluated, he drafted a motivation in which he set forth the reasons he believed that his own post should be subjected to a similar process. The tenor of his motivation revolved around the increase in scope of the work he had performed and the responsibilities he had assumed since the post had previously been evaluated at level 11 in 2004. He concluded that,

'Based on the aforementioned motivation and information it is clearly evident that the role and responsibility of the Regional Finance Managers have changed significantly ie (more than 20%) since 2004, whereby greater responsibilities have been placed on these managers (refer to old and new Job Descriptions). As a result it would be fair to request that the post of the Regional Finance Managers be re-evaluated, as was the case for other posts that was recently upgraded in the regions.'

- [5] He, together with two other similarly placed individuals who likewise desired that their own posts be upgraded, concluded the submission with the request that the individuals to whom it had been directed grant their approval for the evaluation of the Regional Finance Manager post. The request was unanimously supported by the General Managers in the four regions, and unanimously recommended by the Senior General Managers for both Operations and Corporate Services, as well as the Chief Financial Officer. In a handwritten note appended to her signature, the Senior General Manager proposed that,

'... all the special requests for re-evaluation continue according the Public Service Act. We are supposed to do this every 3 years. Maybe we should do this by levels.'

Although the final signature (having been that of the Head of Transport) was undated, by virtue of the fact that the preceding signature was dated 24 February 2010, his approval must have followed thereafter.

- [6] Some three months later, the Regional Managers (including the applicant) addressed further correspondence to the Senior General Manager: Corporate Services, On 26 May 2010, with reference to the previously approved submission, they wrote,

'In terms of Department of Public Service and Administration, circular no 2 of 2009, the evaluation and upgrading of levels 9 to 10 and 11 to 12 will not be permissible as of 1 July 2010 as per paragraph 7.12.2. (refer to attached copy). As a result of the impending deadline (1 July 2010) and the delay in having our post from being evaluated, we are being prejudiced for reasons that do not effect or impact on us.'

In view thereof we are therefore drawing to the attention of the department that should this process not be finalized and implemented before 30 June 2010, we reserve the right to declare a dispute to ensure that we are not prejudiced due to the actions and delays of the department. We also wish to place on record that we have complied and met all administrative requirements for this evaluation to be undertaken and completed within the prescribed timeframe.'

- [7] Clause 7.12.2 of Circular 2 of 2009 (having been the clause which the applicant had asserted in his letter would constitute an impediment to the re-evaluation of the post after 30 June 2010) provided that,

'The commencing salary for posts of Assistant Director and Deputy Director (or equivalent salary levels) has been determined on salary levels 9 and 11 respectively. This will suspend the authority of Executive Authorities to grade Assistant and Deputy Director jobs at salary ranges 10 and 12.'

- [8] From correspondence which emanated from the office of the Deputy Manager: Management Advisory Services, it appears that by 30 June 2010 the issue of the re-evaluation of the Regional Finance Manager posts had been presented to the Departmental Job Evaluation Panel, however a directive had also by then been issued by the MEC: Transport, Community Safety and Liaison that all Job Evaluations were to be suspended pending the determination of the Departmental structure. It was envisaged that a circular would be issued once the moratorium had been uplifted.

- [9] In response to his request for a meeting on 13 September 2011 the applicant was informed that no point would be served thereby as the moratorium put in place by the MEC had not been lifted. That which ensued pursuant thereto, evinced only by the exchange of correspondence since that date was not adequately explained by the applicant so as to enable this court cogently to discern the further timeline of relevant events.

- [10] Notably, however, with reference to a large number of documents which were attached to his founding affidavit collectively as annexure 'E' the applicant

made mention of a '*submission for approval for the job evaluation of posts on Salary Level 9/10 and 11/12*' on 2 February 2015. The various discrete documents annexed to the applicant's founding affidavit as annexure 'E' were undescribed and none of which were readily identifiable as that described by the applicant. The applicant explained that such '*submission for approval*' was in terms of the '*Implementation of the Amendment to PSCBC Resolution 3 of 2009*' which had been signed on 5 August 2014. Consideration of the documents included as annexure 'E' revealed the inclusion of both Resolution 3 of 2009 and Circular 4 of 2014 (signed on 5 August 2014), however neither the relevance to nor the effect of the amendment to the Resolution in relation to the issue of the re-evaluation of applicant's job was explained.

- [11] In 2016 the applicant approached his attorneys, who on 4 May 2016 addressed correspondence to the DOT on behalf of the applicant and two other incumbents in the post of Regional Finance Manager, in which it was alleged that the failure on the part of the DOT to evaluate their posts constituted both an Unfair Labour Practice and was in violation of the Employment Equity Act, 1998. The demand was then issued that a job evaluation be conducted within 7 days of the date of the letter, failing which further legal redress would be sought. The demand was not complied with and the present application was initiated some two years later in 2018.

Analysis

- [12] In the present application, as with the letter of demand, the applicant sought to compel the evaluation of his post on the basis that the DOT, having failed to have done so, had acted both unfairly and in violation of the Employment Equity Act, 1998 ('the EEA'). Asserting the legal basis upon which his claim was founded, his Statement of Claim provided,

'6.1 Whether the First Respondent had acted unfairly by not approving / finalising my current position whereas other job evaluations of employees were approved.'

6.2 *Whether the First Respondent is in violation of the Employment Equity Act which prescribes equal pay for work of equal value.'*

[13] As to the issue of 'unfairness', it is trite that this court lacks jurisdiction to adjudicate any dispute alleged to be the commission of an unfair labour practice, such disputes being required to be arbitrated by either the CCMA or the appropriate Bargaining Council in terms of s191(5)(a)(iv) of the LRA.

[14] There is no absolute right to equal pay for equal work in terms of the EEA, or any other legislation. In terms of the EEA a cause of action in relation to equality of remuneration may be found in s6(4) which section prohibits all discriminatory practices in relation to terms and conditions of employment,

'A difference in terms and conditions of employment between employees of the same employer performing the same or substantially the same work or work of equal value that is directly or indirectly based on any one or more of the grounds listed in subsection (1), is unfair discrimination.'

[15] Not only was such a claim required to have been determined by way of adjudication in terms of s10(6)(a) of the EEA, but essential to such a cause of action was the allegation that an act of discrimination on the basis of one of the grounds listed in s6(1) of the EEA had been perpetrated by the employer, measured against a comparator in the workplace. Both these aspects were notably absent from the applicant's pleaded case, his claim not having been predicated on the commission of any act of discrimination by the DOT.

[16] In argument the applicant sought to place reliance on the Public Service Act, 1994 ('the PSA') and the Regulations promulgated thereunder, having asserted a duty on the part of the DOT to have re-evaluated his job. Given that no reliance had been placed on either the PSA or its Regulations in his Statement of Claim, upon the conclusion of the hearing the applicant was invited to deliver supplementary heads in which he was afforded an opportunity to amplify the legal basis for his reliance thereon. In such supplementary heads of argument this court's attention was drawn to those portions of the of the Public Service

Regulations, 2001 which provide that job evaluations are to be used to ensure parity of remuneration; and that Executing Authorities are obliged to review job descriptions once every three years.

[17] Whether an obligation to re-evaluate posts in the Public Service exists in terms of either the PSA or its Regulations was not the basis upon which the applicant approached his court, and was not an issue which this court was called upon to decide. It is trite that a litigant cannot seek to make out a case not advanced in its pleadings and, as such, the applicant's *post fact* reliance thereon constituted an impermissible attempt to do so.

[18] Finally, to the extent that the applicant sought, again in argument, to rely on the provisions of s158(1)(a)(iii) of the LRA, this section likewise did not avail him. Whilst s158(1)(a)(ii) provides that this court may issue an order directing the performance of any act which would remedy a wrong, and give effect to the primary objects of the LRA itself, it relates to the extent of this court's powers and not to its jurisdiction. An order granted under s158(1)(a)(iii) may be made, but only in respect of claims established in relation to disputes over which this court has been vested in jurisdiction. It is not intended to vest this court with general jurisdiction over matters which it does not otherwise have jurisdiction.

[19] In conclusion:

- This court does not have jurisdiction to determine the applicant's claim as an unfair labour practice;
- The applicant failed to make out a case for this court to conclude that the DOT had acted in contravention of s6(4) of the EEA;
- No finding may be made in relation to the DOT's obligations under the Public Service Act or its Regulations, as this was not the applicant's pleaded case; and
- S158(1)(a)(iii) of the LRA may not be relied on in the absence of a claim established in respect of a dispute over which this court has jurisdiction.

[20] The application accordingly falls to be dismissed.

Costs

[21] Given that there is an ongoing employment relationship between the parties, and given further that the applicant appears *bona fide* to believe that he has cause for complaint, this court is not of the opinion that the interests of justice require that he be ordered to pay the DOT's costs.

Order

1. The application is dismissed.
2. There is no order as to costs.

K Allen-Yaman

Judge of the Labour Court of South Africa

Appearances

Applicant:

Ms P Chetty, Derik Jaftha Attorneys

First Respondent:

Mr P Blomkamp SC, instructed by Govindsamy, Ndzingi and Govender Inc