



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

Signature

Date

IN THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Case No: D593/2020

In the matter between:

Paseka Mosole

Applicant

and

MEMBER OF THE EXECUTIVE COUNCIL:
DEPARTMENT SPORTS, ARTS, CULTURE
AND RECREATION: FREE STATE PROVINCE

First Respondent

DAVID FANAPI N.O.

Second Respondent

GENERAL PUBLIC SERVICE
SECTORAL BARGAINING COUNCIL

Third 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 10h00 on 13 March 2026.

JUDGMENT

ALLEN-YAMAN J

Introduction

- [1] The applicant seeks orders condoning the late initiation of his application; that an award issued by the second respondent under case number GPBC1062-2020 ('the award') be reviewed, set aside and substituted with an order that the first respondent committed an unfair labour practice by having demoted him from the position of Director to that of Deputy-Director; and that he be reinstated to the position of Director with no loss of benefits with retrospective effect to the date of his demotion.
- [2] The application was opposed by the first respondent.
- [3] When initiating his application, the applicant attached a number of documents to his founding affidavit, and relied thereon in support of his assertions that the award fell to be reviewed and substituted. The record itself was incomplete, the first respondent's witness' evidence not having been included in the transcribed portion thereof. In review proceedings this court may take cognizance of only that which served before the decision maker, and his application will be considered with reference to such part of the record as was delivered.

Condonation

- [4] The application was initiated two days outside the time period allowed therefor. Having applied for condonation for the delay, explained on the basis that it had been occasioned by the need on his part to secure funding through his legal insurers, the first respondent did not oppose the granting thereof. As there is no reason not to grant the applicant the indulgence sought, condonation will be granted.

Background

- [5] On 20 June 2016, at a time when the applicant occupied the substantive post of Deputy Director: Human Resources Utilization & Capacity Development, his Head of Department addressed correspondence to him in which he was advised that he had been appointed to act as an Office Manager in the office of the MEC with effect from that date. It was stipulated that such acting position would endure until the post was filled, subject to it being limited to a maximum period of 12 months. He was further notified that by accepting the appointment, he would be entitled to an acting allowance, and was reminded that the appointment to the position in an acting capacity did not assure him of appointment to the post upon it being advertised in due course.
- [6] Thereafter, on 16 September 2016, the MEC addressed a letter to the Head of Department in which she requested the applicant to be transferred to her office with effect from 1 October 2016. As a result, a submission was prepared for consideration in which the effects of the requested transfer were set out, including the financial implications thereof.

'To obtain approval for the transfer of Mr P I Mosole from the Human Resource Utilization and Capacity Building Sub-Directorate to the Office of the MEC in the capacity as Head of Office with effect from the first of the month following the month of approval.'

'Mr Mosole was appointed to act in the post of Director: Office of the MEC with effect from 20 June 2016 but to align his acting with the new Public Service Regulations he now has to be transferred to the post without affecting his employment status, which is as permanent. This in essence means that he will be in the office of the MEC but his permanent position should not be filled.'

*'The following will be paid to Mr Mosole as from 20 June 2016
An acting allowance of R898 743 (1st notch salary level 13) – R855 516 (Mr Mosole's notch) = R43 227 pm/12 = R3602.25 pm.
Allowance applicable to the post in the Office of the MEC: R5 800 pm.'*

'The permanent post which Mr Mosole occupies on the establishment cannot be filled.'

The submission was subsequently approved by both the Chief Financial Officer and the HOD.

- [7] At the beginning of the following year the MEC addressed a further letter to the HOD wherein the secondment / transfer of Mr Mosole was again requested. The body of the letter was substantially the same as the first, however included in this letter was a stipulation that,

'Mr Mosole should be remunerated at the last notch of salary level 13 (R1 058 691.00) in terms of Chapter VIII 37(2)(a) of Public Service Act.'

- [8] This led to a further submission being authored on 25 March 2017. In this submission the recipients thereof were requested to make an election as to the manner in which the applicant was to continue in his role as Office Manager: *'Transfer and permanent absorption or Temporary Transfer and secondment.'* Apparently having considered the matter, the HOD merely noted the recommendation and indicated that it was for the MEC alone to decide. The MEC herself approved the permanent transfer and absorption of Mr Selelo, having noted, *'Approve the permanent transfer and absorption.'*

- [9] Pursuant thereto the applicant was given a letter in April 2017 by the Director: Human Resources Management, the purpose of which was *'to give effect to the Executive Authority's request for [his] secondment / transfer to the office of the MEC in the post of Director: Head of Office'*. Having set out the provisions relating to transfers in the Public Service in terms of s14, and s66 of the Public Service Regulations, the terms of the secondment / transfer were set out. The applicant appended his signature evincing his acceptance of the secondment / transfer on 25 April 2017,

'Hereby, I Paseka Mosole agrees to be seconded / transferred to the Office of the MEC subject to the above-mentioned criteria.'

The MEC subsequently noted the content of the letter and likewise appended her signature thereto.

[10] After having occupied the position in the Office of the MEC for almost three years, at the end of June 2019 the Director: Human Resource Management once again addressed correspondence to the applicant. In this letter he was reminded that he would be returned to his original post with effect from 1 July 2019. He was requested to meet with a salaries official to discuss the restructuring of his remuneration package. Whilst a number of issues arose in relation to the manner in which the eventual variation of his salary was effected, those issues are not relevant to the issue of whether he was demoted by the first respondent, and will be considered no further.

Analysis

[11] As has been mentioned, the record was incomplete. In the absence of having delivered that part thereof which included the evidence of the first respondent's witness, the applicant addressed correspondence to the first respondent in which he expressed his view that the record as had been made available sufficed to resolve the narrow issue at the heart of the matter, being,

'... whether the Arbitrator disregarded all the evidence on record in favour of our client and placed undue weight on Annexure FA7 referred to in our client's founding papers (being the letter signed by our client on 25 April 2017 and referred to as Annexure G in the award), which letter the arbitrator based his findings on the matter.'

[12] It had been the applicant's case that by removing him from the post of Director in the office of the MEC, a level 13 position, and placing him in the post he had previously held prior to having been transferred to the office of the MEC, that of Deputy Director, at level 12, he had been demoted. The issue was accordingly the reasonableness of the second respondent's conclusion that the applicant had not been demoted on the basis of the conclusions he reached in relation to the letter signed by the applicant on 25 April 2017.

[13] As the applicant in an Unfair Labour Practice dispute, the applicant bore the onus to establish the commission thereof by the first respondent. The basis upon which he founded his claim was not particularly clear. Given the nature of the contract which he signed when having acceded to the placement, together

with the legal framework which governs the transfers and secondments of Public Servants, the second respondent's conclusion that the applicant had not been demoted was the only reasonable decision which could have been arrived at on the evidence before him.

[14] The filling of posts in the Office of executive authorities (as was the case in relation to the applicant) is governed by Regulation 66 of the Public Service Regulations. It may be mentioned that at the time of his initial transfer, the Public Service Regulations, 2001 had been in place, however, those regulations were replaced by the Public Service Regulations, 2016 on 19 August 2016, with effect from 1 August 2016. As such, at the time when the second request was made by the MEC on 9 January 2017, it was the Public Service Regulations, 2016, which were of application, despite the MEC then having referred to and relied on the Public Service Regulations, 2001.

[15] The filling of posts in the office of MEC is governed by Regulation 66, the relevant portions of which read,

- (1) *An executive authority may only fill vacancies in the Office of an executive authority or Deputy Minister by means of –*
- (a) *an appointment in terms of section 9 of the Act for the term of office of the incumbent executive authority or Deputy Minister which will terminate at the end of the first month after the month which the term of that executive authority or Deputy Minister terminates for any reason; and*
- (b) *a transfer in terms of section 14 of the Act, provided that the employment status of the transferred employees as permanent or temporary, as the case may be, shall remain unaffected by the transfer.*
- ...
- (3) *Subregulation (1) shall not be construed as preventing the secondment in terms of section 15(2) or (3) of the Act of a person or an employee or an assignment in terms of section 32 of the Act of an employee to perform the functions of a post in the office of an executive authority or a Deputy Minister.'*

[16] Sections 9, 14 and 15 of the Public Service Act, 1994 provide for appointments, transfers and secondments:

- S9 provides that an executive authority may appoint any person in his or her department in accordance with the PSA, in such manner and on such conditions as may be prescribed.
- S14(1), governing transfers, provides,
'Subject to subsections (2), (3) and (4), any employee of a department may be transferred –
 - (a) *within the department, by its executive authority;*
 - (b) *to another department by the executive authorities of the two relevant departments.'*
- Section 15 empowers an executive authority to approve the secondment of an employee for a stipulated period on prescribed conditions.

[17] From the documentation presented at the arbitration it is evident that the applicant's initial move to the office of the MEC was by way of a secondment. He was advised that the position was an acting appointment, that he would receive an acting allowance, and that it was to be of limited duration. In the letter which was accepted as having been authored by the MEC later that year she requested that the applicant be seconded / transferred. Then relying on the Public Service Regulations, 2001, it was clearly envisaged that the secondment / transfer would be for a maximum period of three years, linked to her term of office. She authored a similar letter at the beginning of 2017, still relying on the Public Service Regulations, 2001, but then stipulating that the applicant's salary should be paid at the highest notch of salary level 13.

[18] Her final letter led an official of the first respondent (to have prepared a submission for approval by both the HOD and the MEC as to the manner in which the 'transfer' of the applicant was to be effected. It was noted therein that two options were available: (1) the applicant could be transferred temporarily by way of a secondment; or (2) he could be permanently transferred and absorbed into the position within the office of the MEC. These alternatives were amplified in the following terms,

'The post of Director: Office of the MEC became vacant with the transfer of Mr M Sefo to the Office of the Head of Department responsible for Public Participation, Transformation and Events.

Mr Mosole was appointed to act in the post of Director: Office of the MEC with effect from 20 June 2016 but to align his acting with the new Public Service Regulations he has been temporary transferred seconded to the post without affecting his employment status, which is as permanent. This in essence means that he will be in the office of the MEC but his permanent position should not be filled.

The second option is to permanently transfer Mr Mosole and absorb him in the Director: Office of the MEC which then in essence means that he will vacate his permanent post at the Human Recourse Utilization and Capacity Building Sub-Directorate and that his post can then be advertised and filled.'

The HOD noted that the election between the options was for the MEC. The MEC approved the applicant's permanent transfer and absorption on 27 March 2017.

- [19] Despite the MEC's election, the terms of the applicant's transfer accorded with the alternative option presented. Rather than having raised any issue with the terms of his proposed transfer to the Office of the MEC presented to him, on 25 April 2017 he signed acknowledgment and acceptance thereof. By signing, he bound himself to the following express provisions,

'For the period you are seconded to the MEC's Office you will be appointed as Director on salary level 13 on the last notch, as directed by the MEC. You will receive full remuneration as a Director with the understanding that when your period of secondment/transfer ends, you will return to your original post of Deputy Director on salary level 12 the maximum notch. Thus meaning that your acting allowance will be stopped and your temporary appointment will be implemented.'

Although the terms of the intended transfer did not correlate with the election made by the MEC a month previously, she too signed the document, indicating that she had noted its contents.

[20] The essence of the applicant's argument that he had been demoted constituted the reliance he placed on the MEC's recommendation, and extraneous discussions which were said to have been had between himself and the MEC concerning the nature of his transfer. Not only did the MEC herself not testify at the arbitration, but wholly unexplained by the applicant was why both he and the MEC signed a document which unequivocally reflected a different position if the agreement had actually been that he was to have been permanently transferred to Office of the MEC.

[21] To the extent that Mr Merabe, who appeared for the applicant, sought to argue that the decision of the MEC (as reflected in her approval of 17 March 2017) stood until reviewed or set aside, this was never the applicant's case in the course of the arbitration.

[22] Moreover, despite the fact that he did not appear to take issue with the fact that he had been relocated back to his original post, central to his complaint was his argument that he had been entitled to retain the higher level salary. Wholly unexplained was the objective basis from which he had formed his opinion that he had been so entitled.

[23] In consideration of the evidence upon which the applicant relied to substantiate his case at the arbitration, this court cannot discern any evidence which ought to have caused the second respondent to conclude other than he did. Whilst it may be accepted that the second respondent impliedly concluded that the applicant had failed to prove a right to the higher level position and salary on the basis of his acceptance of the terms of the transfer on 25 April 2017, there was no conversely compelling basis for him to have concluded that any unfairness attached to the events of which the applicant complained.

[24] Despite the recommendation by the MEC, the ultimate terms of the applicant's transfer were unequivocal, and were agreed to by both him and the MEC. Those terms left no room for any conclusion other than that he had been seconded to the office of the MEC and that his secondment had arrived at its natural end. The applicant was not demoted: pursuant to the termination of the

period of his secondment, he returned to his substantive post and his remuneration was adjusted accordingly.

[25] In the circumstances, irrespective of the second respondent's reasoning in having arrived at his conclusion, his finding that the applicant had not been demoted and that no Unfair Labour Practice had been perpetrated by the first respondent, was not unreasonable. The award is accordingly not one which is reviewable, and the application will be dismissed.

Costs

[26] When initially having opposed the application the first respondent asked that it be dismissed with costs. Mr Manye who appeared on its behalf accepted, however, that the applicant may have been of the *bona fide* belief that he had been demoted, and that the application was accordingly not one which had been vexatious.

[27] This court is of the view that the application was no more than an attempt on the part of the applicant to enforce what he believed to have been his rights and, as such, the usual practice of this court that there will be no order as to costs will be followed.

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:

Mr M Merabe, Horn & Van Rensburg Attorneys

First Respondent:

Mr T Manye, instructed by the State Attorney, Bloemfontein

LABOUR
COURT