

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: 2025-052490

(1)	REPORTABLE:	NO
(2)	OF INTEREST TO OTHER JUDGES:	NO
(3)	REVISED:	✓
DATE		7/5/2026
SIGNATURE		[Redacted Signature]

In the matter between:

D C SENEKAL

Applicant

and

JUDICIAL SERVICE COMMISSION

First Respondent

CHAIRPERSON- JUDICIAL SERVICE COMMISSION

Second Respondent

ACTING CHAIRPERSON JUDICIAL SERVICE COMMISSION

Third Respondent

JUDICIAL CONDUCT APPEAL COMMITTEE

Fourth Respondent

JUDGMENT

VAN DER WESTHUIZEN, J

[1] The applicant launched a review application ostensibly in terms of section 20(4) of the Judicial Service Commission, Act 9 of 1994 (the Act). He sought the following relief:

1. A declaration that the first and fourth respondents had misdirected themselves, in that the applicant's complaint was not about the merits;
2. A declaration that the narrative was changed in the Ruling by the First and Fourth respondents and declaring further that relevant facts (i) were omitted and or (ii) twisted in the Ruling;
3. An order remitting it back to the first and fourth respondents;
4. Directing the matter to the Directorate Priority Crime Investigation.

[2] Section 20(4) of the Act provides as follows:

"If the Commission finds that the respondent is suffering from an incapacity, is grossly incompetent or is guilty of gross misconduct, the Commission must submit that finding, together with the reasons therefore and a copy of the report, including any relevant material, of the Tribunal, to the Speaker of the National Assembly."

[3] The applicant appeared in person at the hearing. It is to be noted that the applicant's formal documents did not comply with the requirements prescribed for legal proceedings such as the present. The application fell far short of the requirements. The applicant filed an Index which listed the documents filed. It indicated that a notice of motion, together with a supporting affidavit was filed. The index further indicated that annexures relating to a letter from the JSC, dismissal of complaint and appeal and tainted ruling were filed. At best, the notice of motion at best contains

the relief that was sought. However, the supporting affidavit was brief and curt. It merely listed certain issues.

- [4] The relevant background to this purported review is to be gleaned from the ruling complained of. The applicant sustained an injury on duty in an alleged government department. That injury was of a permanent nature. The injury suffered was a partial loss of hearing. The applicant apparently sustained the injury leading to the loss of hearing whilst doing his compulsory National Service. At the time he was a qualified teacher and was employed as such by the Defence Force. After completing his compulsory National Service, he was employed by the department of education as a teacher. He demanded to be accorded appropriate conditions of employment as an employee with disability. His demands were not met. That resulted in the applicant "withholding his labour" and he did not return to work for an extended period. The department charged him with misconduct and held a disciplinary hearing. He was found guilty and his employment was terminated. The applicant did not accept the validity of his dismissal and a dispute arose. By agreement, that dispute was referred to the Education Labour Relations Council for arbitration. The arbitrator found that the applicant was not legally entitled to withhold his labour and that the dismissal was substantially fair. However, due to the department taking too long in holding the disciplinary action, the arbitrator found the dismissal to be procedurally unfair and directed the department to pay the equivalent of four months' salary the applicant. Still not satisfied, the applicant took the award on review to the Labour Court. That court dismissed the review application. The applicant subsequently referred the matter back to the Education Labour Relations Council for the rescission of the award. That application was also dismissed. The applicant had numerous cases pending in the Labour Court, including a claim for unfair discrimination. All those matters were consolidated and referred to trial. The trial was held and resulted in delivery of a comprehensive judgment. In terms of the judgment, certain claims were dismissed. However, on the issue of unfair discrimination the court held in favour of the applicant

and awarded an amount the equivalent of remuneration for twelve months. The applicant sought to appeal the order, but leave was refused. Unperturbed, the applicant launched an application to hold the department in contempt of court in respect of a ruling prior to the hearing of the trial. That application was dismissed on the ground that it was moot in view of the trial having been completed and ruled upon. The applicant's application for leave to appeal that dismissal was refused. The applicant thereafter launched fresh proceedings for unfair discrimination in the Equality Court in the Gauteng High Court. Those proceedings were dismissed for want of jurisdiction. The applicant nevertheless soldiered on and launched proceedings on an urgent basis in the Labour Court. That application was struck off on the basis that it was frivolous and the applicant was mulct with a punitive cost order. An application for leave to appeal lodged at the Labour Appeal Court was equally unsuccessful. Following yet another defeat, the applicant lodged complaints against a number of judges who had presided in the aforementioned matters. The Acting Chairperson, tasked to consider the complaints against the judges, was of the view that the complaints related to the merits of a judgment or order and dismissed the complaints in terms of section 15(2)(c) of the Act. The applicant then launched an appeal to the Judicial Service Commission against that dismissal. The Judicial Service Commission held the impugned decision to have been correct. It is this finding that the applicant sought to review.

- [5] The aforesaid was not set out in the applicant's founding affidavit, but is to be gleaned from the impugned ruling of the Judicial Services Commission.
- [6] A number of points *in limine* were raised by the respondents in their answering affidavit. None of those were dealt with by the applicant in a replying affidavit. The applicant did not file any replying affidavit and was content to rely on his submissions in his heads of argument only and those raised in his oral argument in this court. He did not address any of

those points *in limine* in his heads of argument or in his oral address to this court.

[7] The respondents raised the following points *in limine*:

1. A misplaced application for review;
2. Misjoinder;
3. Incompetent relief sought.

[8] It is clear from the provisions of section 20(4) of the Act, as recorded above, that they relate to the procedure to be followed by the Commission after a finding of incapacity, gross incompetence or gross misconduct has been made. No such finding was made, nor is it the subject of this matter. Consequently, it does not warrant a referral to the Speaker of the National Assembly. Section 20(4) of the Act does not find application in this matter. Any reliance on that section is accordingly misplaced.

[9] The decision that was sought to be reviewed only relates to the Judicial Conduct Committee. None of the other respondents were involved therein. They are not alleged to have participated in, or taken the impugned decision. The provisions of Rule 10 of the Uniform Rules of Court clearly do not apply to this matter and the joinder of those parties were not warranted. It follows that the application in respect of those parties stand to be dismissed.

[10] In respect of the third point *in limine*, the respondents submitted that the relief sought by the applicant is incompetent for what follows. In the main the applicant sought declarators. It is trite law that a declarator will only be granted where there exists a current, future or contingent right or obligation which a declaratory order would address. The applicant is further obliged to show that he has a direct and substantial interest in

the subject matter. It is contended for by the respondents that the applicant has dismally failed to comply with the requirements for a declaratory order, and in my view, rightly so.

- [11] Considering the heads of argument filed by the applicant and his oral submissions in this court, it is apparent that the applicant did not appreciate the principles applicable in respect of each of the proceedings that he had instituted. His non-compliance with those principles resulted in the adverse findings against him. The inference to be drawn from his repetitive attempts in obtaining the redress is that he would not refrain from litigating until he has obtained that what he believes his was entitled to. He would only refrain from further litigation once he has achieved his aim, irrespective of the merits thereof.
- [12] It is not possible to glean from the founding papers of this application on what premise it is based, whether in terms of PAJA or on the principle of legality.
- [13] On the issue of whether this review is premised upon PAJA, it is to be noted that the Judicial Service Commission and its Judicial Conduct Committee exercise statutory powers in terms of The Judicial Service Act. When dealing with complaints against judges, the Committee performs a public function in terms of national legislation. Where decisions are taken in terms of the provisions of sections 15 and 18 of the Act, those decisions constitute administrative actions as defined in PAJA, alternatively may be subject to review on the principle of legality.
- [14] It is trite law that a review is not directed at correcting a decision on the merits, but rather ensuring that the decisionmaker had acted lawfully and within the boundaries of his or her powers.
- [15] What an applicant for review is obliged to show is the following:

- (a) The premise upon which the review is brought, i.e. in terms of PAJA, or on the principle of legality;
- (b) The grounds for review set out with sufficient particularity; and
- (c) Establish on the papers a material irregularity affecting the lawfulness, reasonableness or the procedural unfairness of the impugned decision.

- [16] *In casu*, the applicant has been vague in his allegations and provided insufficient details of his complaints. His allegations lack evidence in support thereof. Furthermore, he contends for factual inaccuracies without identifying such without specificity. His allegations of non-interpretation of the law or the misinterpretation thereof are without specificity. There is a clear lack of particularity in respect of the allegations of the non-consideration of relevant facts, violation of constitutional rights, the omission of facts and the alleged changing of the narrative.
- [17] The applicant's complaint of procedural unfairness in that he was not present when his complaint was considered, is without merit. Section 18 of the Act stipulates that the complainant and the respondent are to be advised of the time and place of the meeting and that they may submit representations within a stipulated period for consideration by the Committee. There is no automatic right to appear in person at such a meeting. Only when the Committee considers it prudent to receive oral submissions, would such invitation follow. The applicant was advised timeously that he could make written representations. The provisions of PAJA equally do not provide a right to appear at the hearing. The applicant's aggrievement in this regard is without merit and cannot be sustained.
- [18] Considering the applicant's contention that the impugned decision was biased and irrational is equally without merit. His contentions in this

regard lacked particularity and specificity. They are unsubstantiated and do not meet the legal threshold in that regard.

- [19] I agree with the respondents' contention that a mere dissatisfaction with a decision does not translate into constitutional irrationality or unreasonableness. No detailed support for the applicant's allegation in that regard was pled by the applicant.
- [20] The applicant furthermore failed dismally in his contention that his Constitutional rights were violated and thus rendered the decision arbitrary. It is trite that an applicant is obliged to plead the specific right that was allegedly violated, the alleged manner in which it was infringed and a factual basis for such infringement. Furthermore, the applicant is not permitted to rely directly on the provisions of section 33 of the Constitution where the provisions of PAJA apply.
- [21] From all the foregoing, there is no basis why this matter ought to be referred back to the Judicial Service Commission or the Judicial Conduct Committee. That relief stands to be refused.
- [22] The applicant further sought in his notice of motion that this matter be directed to the Directorate Priority Crime Investigation. No facts were pled why this relief sought should be granted. The founding affidavit is totally silent thereon. The relief stands to be refused.
- [23] Accordingly, in view of all the foregoing, the applicant has failed to prove his onus in obtaining any of the relief he sought in his notice of motion. The application for review stands to be refused.
- [24] There remains the issue of costs. The respondents seek a punitive cost order which is premised upon the applicant's alleged abuse of process. In my view, the applicant's approach and conduct evidenced in the background as contained in the impugned ruling, which formed the basis

of this application and his lack of candour in pleading his case in an inappropriate manner, warrants some sanction.

I grant the following order:

The application for review is dismissed with costs, such costs to include the cost of Senior Counsel where so employed, and to be taxed on the scale as between Attorney and Client.



C J VAN DER WESTHUIZEN
JUDGE OF THE HIGH COURT
PRETORIA

On behalf of Applicant: In person
Instructed by:

On behalf of Respondent: F Mathibedi SC
Instructed by: State Attorney

Date of hearing: 11 March 2026

Date of Judgment: 7 May 2026