

MEDIA RELEASE

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For Immediate Release

Response from the Department of Public Service and Administration Regarding Judgment J1133-2023

The Department of Public Service and Administration (DPSA) acknowledges the Labour Court decision in Judgment J1133-2023 issued on 14 September 2023. The Department is appealing the judgement as, in our view, it does not accurately reflect the facts of the case or the applicable law.

It is equally important to clarify the delineation of roles and responsibilities within the public service, as some media houses seem to have misunderstood and created misconceptions whilst reporting on this judgment.

The Minister for the Public Service and Administration, as the political head of the Department, exercises her powers as outlined in Section 3 of the Public Service Act (PSA). However, when it comes to disciplinary matters for employees, the responsibility lies with the Head of Department, who serves as the administrative head of the Department. Section 7(3) of the PSA confers powers to HODs to manage administrative matters in their respective departments. This includes human and financial resources, labour relations and discipline. In terms of Section 16B, the HOD is further responsible for implementing the sanctions recommended by the Chairpersons of a disciplinary hearing.

Therefore, the Minister's involvement in disciplinary matters is limited to the disciplinary processes of the Head of Department. In the Public Service, the Executive Authorities' role primarily focuses on policymaking, oversight, and providing strategic direction. The Minister may, in terms of Regulation 92 of the PSA, subject to the Labour Relations Act, issue a directive to establish misconduct and incapacity procedures for members of the SMS. In the context of the court processes, it is a common practice for the Minister to be cited as a respondent, as the parity of power is an internal issue.

The Public Service Coordinating Bargaining Council (PSCBC) Resolution 1 of 2003 provides for processes and procedures within which the Disciplinary process in the public service is held. These outline the procedures and safeguards to ensure fairness, due process, and the protection of the rights of both employees and employers.

On one hand, employees have the right to be informed of the allegations against them, to be given an opportunity to state their case, to be represented by a trade union representative or a fellow employee, and to present evidence and call witnesses in their defence. They also have the right to a fair and impartial hearing, where the evidence is considered, and a decision is made based on the balance of probabilities.

On the other hand, the employer, represented by the Department's Director-General (DG) or delegated officials, has the responsibility to initiate and conduct disciplinary proceedings in accordance with the prescribed procedures. This includes conducting investigations, gathering evidence, notifying employees of the charges, providing a fair hearing, and making impartial decisions based on the available evidence.

The DPSA upholds the highest standards of ethics, integrity, and transparency in handling matters affecting employees within the Department and public service at large. This is not different with respect to the disciplinary action referred to in the above-mentioned judgement and other cases we have handled. We further take all court judgments seriously, including the one stated above.

A review of the discipline management regime in the Public Service has been undertaken, and a discipline management strategy is being rolled out. The department is further reviewing the SMS handbook and Disciplinary Code to close policy and implementation gaps identified through this case and many other cases reviewed. The department has further noted a rise in protected disclosures lodged by employees on precautionary suspension. A detailed guideline on protected disclosures, as they interface with disciplinary processes, is being considered to ensure that disciplinary hearings are not delayed and or disrupted due to such disclosures- be they real, perceived or imagined.

The DPSA believes that accurate information and a clear delineation of roles will contribute to a more informed public discourse on matters of public administration. We also encourage public servants to continue their dedication to serving the South African people with professionalism, integrity, and commitment. HODs are further encouraged to move steadfastly and conclude long-drawn disciplinary hearings in their departments.

As a department, we continue to support public servants in their critical roles and in ensuring the provision of efficient and quality public services. We also appeal to the media to exercise due care not to over-expose the identity of employees when reporting on discipline matters

amongst others, as such can bring unnecessary attention and danger to employees and other role players.

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