



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

The Public Servants Association of South Africa and others v Government Employees Pension Fund (Case no 886/2019) [2020] ZASCA 126

From: The Registrar

Date: 9 October 2020

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgment of nor is it binding on the Supreme Court of Appeal

Today the Supreme Court of Appeal (SCA) handed down judgment in an appeal against a decision of Van der Westhuizen J, sitting in the Gauteng Division of the High Court, Pretoria (the high court). The appeal was upheld with costs, including the costs of two counsel.

The matter involved the interpretation and application of the rules of the First Respondent, the Government Employees pension Fund (the GEPF). In terms of the rules the GEPF was required to consult 'employee organisations' before making a decision concerning the alteration of actuarial interest factors employed in the calculation of benefits.

The GEPF had made a decision without consulting the employee organisations. When the appellant, the Public Servants Association (the PSA) protested, the GEPF sought to use the Public Service Co-ordinating Bargaining Council (the PSCBC) as a means of ex post facto consultation.

The high court held that the GEPF was justified in doing so. It took into account that the GEPF itself had employee representation on the Board as did the PSCBC and that the role of actuaries was the significant factor. It held the consultation requirement meant only that discussion and not agreement should ensue.

It dismissed the application by the PSA to have the decision by the GEPF altering the actuarial interest factors set aside with costs, including the costs of two counsel.

The SCA held that the envisaged consultation had to precede the decision and had to take the form prescribed by the rules, namely, with employee organisations. It rejected the argument that the views of the majority should prevail through the medium of the PSCBC. It held that consultation meant that the views of the entity or person that had to be consulted must be considered by the decision maker. It held further that the views of actuaries were subject to interrogation.

In the result the appeal was upheld with costs including the costs of two counsel. The decision of the GEPP was set aside and it was ordered to consult with the employee organisations concerned.