



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 09 November 2023

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 judgments of the Supreme Court of Appeal

Petronella De Nysschen v Government Employees Pension Fund and Others (864/2022) [2023]
ZASCA 147 (09 November 2023)

Today the Supreme Court of Appeal (SCA) upheld with costs an appeal against an order granted by the North West Division of the High Court in terms of which the appellant, Ms Petronella De Nysschen was ordered to refund to the North West Department of Education a pension benefit that she had received from the Government Employee Pension Fund (GEPF).

The pension benefit had been paid to Ms De Nysschen following her dismissal from employment by the Department in June 2013. After her dismissal she received a net pension benefit of R5 194.72 from GEPF. Ms De Nysschen, who had been working for the Department and its predecessor from 1979, successfully challenged her dismissal at the General Public Service Sectoral Bargaining Council. In an arbitration. The arbitrator found her dismissal to have been substantively and procedurally unfair, and directed that she be reinstated to her position on the terms that had governed her employment prior to her dismissal, without loss of benefits. The Department abandoned its attempt to appeal the arbitral award in the Labour Court when its Superintendent-General intervened. The intervention led to a settlement agreement in terms of which the Department agreed to reinstate Ms De Nysschen's pensionable years of service and benefits to the actuarial monetary value to which she would have been entitled had she not been dismissed. This entailed that the Department pay to the GEPF an amount of R7 016 767.76, which it did.

Subsequent to her reinstatement in April 2015, the appellant continued in her employment with the Department until she retired from public service with effect from 1 April 2020. On her retirement she delivered her completed exit documents to the Department's Human Resources Management Division and waited for the Department to process the prescribed pension withdrawal documents and submit them to the Government Pensions Administration Agency (GPAA). This the Department failed to do.

In refusing to process Ms De Nysschen's exit documents the Department demanded that that she agree to refund to it the pension benefit amount that she had received on her dismissal and that she amend her exit documents to reflect that her pensionable service began on the date of her reinstatement. Ms De Nysschen's response was that the Department was not entitled to refuse to process her exit document and suggested that any claim for repayment be set out by the Department in the exit documents.

When the Department persisted in its stance Ms De Nysschen launched an application in the high court, seeking an order that the Department submit her pension fund exit documents to the GEPP for processing. The Department maintained its stance that she agrees to a set off of the amount that she had received after her dismissal against the pension benefit due to her on her retirement. It argued that her demand that her exit documents be processed would lead to her receiving a double pension benefit pay out in contravention of the Public Finance Management Act. It also insisted that she rectify the pensionable period recorded in her exit documents. The high court granted the order sought by Ms De Nysschen and went further to grant an order that she pay to the Department the pension benefit that she had received upon dismissal, which was to be deducted from the proceeds of her retirement pension benefit.

On appeal the SCA found that the high court was correct in its decision that the reason for the refusal to submit Ms De Nysschen's exit documents to the GEPP was not a valid defence to the relief sought by the appellant. As Ms De Nyscchen's employer, the Department was obliged to process her pension benefit documents. According to the SCA, once the relief sought by Ms De Nysschen was granted, that should have been the end of the matter. The Department had not sought any relief for payment and that issue was not necessary for determination of the relief she had sought. It was improper for the high court to grant relief that had not been sought.

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