



EFF STATEMENT ON THE CONSTITUTIONAL COURT DECISION DECLARING THE WAGE AGREEMENT BETWEEN THE STATE AND PUBLIC SECTOR UNIONS INVALID

Tuesday, 1 March 2022

The EFF notes the ruling of the Constitutional Court in the matter between public sector unions and the State. Various public sector unions appealed the decision of the Labour Appeals Court, which had declared as invalid a multiyear wage agreement between the State and public sector unions reached in 2018.

This decision lands a fatal blow to the collective bargaining process, which is provided for in Section 23 (5) of the Constitution. It also grants the State powers to willy-nilly withdraw from agreements on the basis on narrow technicalities, while compromising the well-being of the more than a million public servants, whose rights to strike to enforce their rights were limited because of their adherence to the agreement which the court has now revoked.

A cursory look on the background of this process reveals a litany of mishaps by the State, which have now been overlooked by the apex court in the land. Negotiations for the public wage increase which were the subject of this court decision started in late 2017 at the Public Service Coordinating Bargaining Council. After a number of disagreements, the State's representative tabled an offer on the 25th of January 2018, and on the 26th of January, the parties involved produced a draft agreement for a three-year wage agreement.

The State contends that their representative was not mandated to enter into this sort of agreement, and that the agreement would be financially unsustainable. This notwithstanding, and despite some of the earlier concerns about the unaffordability of the agreement, on the 25th of April 2018, cabinet instructed the Department of

Public Service and Administration to conclude the agreement with public sector unions on the basis of what was agreed on the 25th and 26th of January 2018. This agreement was eventually signed on the 21st of May 2018 between the State and the various public sector unions for the 2018/19, 2019/20, and 2020/21 financial years.

The State later reneged from this agreement, claiming that the country's financial position was such that it would be impossible to adhere to the agreement without compromising the ability of the State to deliver other services, and that there would be a need to cut a lot of public sector jobs in order to reduce public sector wages. We reject these assertions out of hand, South Africa needs more public servants, not less in order to drive development.

The State relied on Regulations 78 and 79 of the Public Service Regulations, which demand that a person negotiating wage agreements on behalf of government must be authorized to do so, and that wage agreements must be based on realistic calculation of the costs. It is mind boggling that the courts upheld this argument. This is so because even if the initial acts by the representative of the state at the bargaining council went beyond the powers that s/he was given, the fact that the cabinet, after consultation and hearing the concerns of the national treasury, ratified this decision, ought to suggest that the State was satisfied that it had the means for remunerating public servants as per the agreement of 2018.

The Constitutional court however deemed the decision of the cabinet to be neither here nor there, because the regulations demand that it must be the Minister of Public Service and Administration who must make this decision, after taking into account Regulations 78 and 79. Even if the logic of the court sustains, the cabinet instructed the minister to conclude the agreement, and left it to her to execute the instruction. The act of concluding the agreement was made by the minister, as mandated by the law.

These legal technicalities notwithstanding, it is shameful that the Constitutional Court has decided to shield the government from implementing collective bargaining agreements that were sanctioned even at the highest level of decision making. It leaves workers exposed to further abuse by not only the State, but also by private

companies. The decision of the court also means that the entire cabinet acted illegally by ratifying a decision they later claimed was illegally made. But the only people who will suffer from these decisions are the workers, who have had no hand in any of the legal blunders the government may have made.

This decision will further give credence to the growing sentiment in the country that the Constitution itself, and the judges who interpret it, have a particular and strong bias against the working class. We will remain vigilant in defence of the interests of the workers, and we urge the government to enter into future negotiations with the workers faithfully, without malice, placing the interests of the workers and the country first.

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