

SOUTH AFRICA / JUDGMENT

Linkside and Others v Minister of Basic Education and Others (3844/2014) [2014] ZAECGHC 111 (17 December 2014)

[2014] ZAECGHC 111

COURT

Eastern Cape High Court, Grahamstown

BEFORE

J M Roberson

CASE / FILE NUMBER

3844/2014

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IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE DIVISION, GRAHAMSTOWN

CASE NO: 3844/2013

DATES HEARD: 12/12/2014

DATE DELIVERED: 17/12/2014

In the matter between

LINKSIDE & OTHERS.....APPLICANTS

and

MINISTER OF BASIC EDUCATION.....1ST RESPONDENT

THE DIRECTOR-GENERAL,

DEPARTMENT OF BASIC EDUCATION.....2ND RESPONDENT

MEMBER OF THE EXECUTIVE COUNCIL,

DEPARTMENT OF BASIC EDUCATION.....3rd RESPONDENT

THE HEAD OF DEPARTMENT

DEPARTMENT OF BASIC EDUCATION,

EASTERN CAPE PROVINCE.....4TH RESPONDENT

SOUTH AFRICAN DEMOCRATIC TEACHERS

UNION.....5TH RESPONDENT

NATIONAL PROFESSIONAL TEACHERS

ORGANISATION OF SOUTH AFRICA.....6TH RESPONDENT

SUID-AFRIKAANSE ONDERWYSERS UNIE..... 7TH RESPONDENT

ORDER

ROBERSON J:-

[1] In respect of the specific amounts paid by the class member schools to educators occupying substantive posts on the provincial educator establishment set out in Annexure “A” to the notice of motion.

[1.1] It is declared that each of the amounts constitutes a debt against the state in terms of the State Liability Act 20 of 1957 (“State Liability Act”);

[1.2] The fourth respondent is directed to make payment of each of the amounts in question to each of the schools in question;

[1.3] To comply with prayer 1.2 above,

[1.3.1] The fourth respondent is directed within 20 days of the court order to appoint a firm of registered chartered accountants to serve as claims administrators (“the Claims Administrators”) to distribute the amounts payable to individual schools as members of the class and advise the court of their identity,

[1.3.2] The fourth respondent is directed to ensure that the Eastern Cape Department of Education pays the amount of R81,445,339.99 to the Claims Administrators appointed in terms of paragraph 1.3.1 above within 60 days of this order.

[1.3.3] The Claims Administrators, acting in consultation with the legal representatives of the class (the Legal Resources Centre), shall:

[1.3.3.1] within 60 days of the appointment of the Claims Administrators, verify each class member’s entitlement to the amount claimed by confirming the existence of a vacant substantive post for the year in question, and proof of the appointment and payment of an educator to that post by members of the class;

[1.3.3.2] within 30 days of verifying the entitlement of each class member, disburse payments to the class in accordance with their claims as set out in Annexure “A” to the notice of motion;

[1.3.3.3] thereafter, within 30 days, return any balance of funds that are not required to be distributed to class members to the Eastern Cape Department of Education;

[1.3.3.4] thereafter, deliver a report to the court setting out all the steps taken by the Claims Administrators to disburse payments and to comply with this order.

[1.4] If the first to fourth respondents fail to make payment to the Claims Administrators, the applicant schools may secure satisfaction of the amounts due in accordance with the procedures set out in terms of section 3 of the State Liability Act.

[2.1] The fourth respondent is directed to issue these educators with letters of permanent employment, specifying their remuneration, in terms of the Employment of Educators Act 76 of 1998, within 30 days of the date of this order.

[2.2] The Superintendent General is directed to report to this court within 60 days of the court order and thereafter on a quarterly basis until this order has been complied with in full, such report to include at least:

[2.2.1] details of the steps taken to comply with paragraph 2 of this order;

[2.2.2] a list of all educators who have been provided with letters of appointment;

[2.2.3] copies of the letters of appointment; and

[2.2.4] confirmation that they have been paid at the levels specified in the letters of appointment.

[3] In respect of all substantive vacancies after the appointment of the educators in Annexure “B” to the notice of motion:

[3.1] The fourth respondent is directed to publish an open educator bulletin by not later than 30 April 2015 which shall include a request that responses to the bulletin be submitted directly to all schools.

[3.2] The School Governing Boards (“SGBs”) of the applicants may interview and make recommendations to fill these posts within 30 days.

[3.3] It is declared that, in the event that the first respondent and the fourth respondent fail to act on such recommendations of the School Governing Boards within 15 days, the educators will be deemed to have been appointed, in which event the fourth respondent is directed to issue each such educator with a letter of appointment within 10 days thereafter,

[3.4] The fourth respondent is directed to publish at least four open post bulletins a year; the first before the end of April 2015, the second before the end of July 2015, the third before the end of September 2015, and the fourth before the end of November 2015.

[3.5] The fourth respondent is directed to circulate the drafts of the post bulletins to the relevant schools, within a reasonable time prior to publishing them, so that the schools can confirm the information and correct any errors.

[4] It is declared that the first and fourth respondents are legally required to take all necessary steps to fill the vacant posts

advertised in the four annual open bulletins with permanent named educators within 60 days of the advertisement of the open bulletins.

- [5] Any party (including any member of the class) may approach the court, on reasonable notice to all other parties and on duly supplemented papers, to seek appropriate relief in respect of any part of this order. In the event of any dispute of fact regarding any amount payable in terms of this order or any other issue that cannot be resolved on motion, any party may refer the issue(s) to oral evidence.
- [6] It is directed that the first to fourth respondents are to pay the applicants' costs, including the costs of two counsel, and including any disbursements arising from the implementation of this order and the costs of the Claims Administrators.

Reasons

for this order are to follow.

J M ROBERSON

JUDGE OF THE HIGH COURT

Appearances:

For the Applicants: Adv S Budlender and Adv L Siyo, instructed by Legal Resources Centre, Grahamstown

For the Respondents: Adv S Collett, instructed by NN Dullabh & Co, Grahamstown

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Prepared on 14 October 2026 · Esheria