



Unions warn government may have to recover salary increases from public servants

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Unions warn government may have to recover salary increases from public servants 25-08-2021 | 17:261 Unions warn government may have to recover salary increases from public servants Africa-Press – South-Africa.

Johannesburg – The government has been warned that it may be forced to sue all public servants who received salary increases based on the three-year wage agreement signed in 2018, which it failed to implement last year. Two unions representing state employees unhappy with the government's failure to honour the wage deal in 2020 on Tuesday told the Constitutional Court that the entire three-year agreement should be set aside and not just the clause relating to its final year. Chris Orr SC, who was arguing for the Public Servants' Association, warned that the consequence of finding the agreement invalid would be that the entire resolution 1 of 2018 should be set aside not just clause 3.3, which deals with the salary increases that were due last year. "It is clear that the agreement is either unlawful in its entirety or lawful in its entirety," Orr told the apex court. As result, according to Orr, the status quo would go back to the position prior to the agreement in the 2017/18 financial year, which would mean that everything is in the air. He said the entire collective bargaining regime is laid to waste. "If the agreement is invalid, it's invalid, if it's unlawful, it's unlawful," said Orr. Pedro van Wyk, representing the National Union of Public Service and Allied Workers, said the Labour Appeal Court (LAC) in its December 2020 judgment declaring clause 3.3 of the agreement unlawful and in contravention of the Constitution severed the

clause from the deal, despite it being part and parcel of the same agreement. Acting Justice Mjabuliseni Madondo asked whether this would not mean that whatever the government has paid in increases to public servants would have to be repaid. In his response, Van Wyk warned that it would lead to the government suing each and every public servant and result in an untenable situation. However, the National Treasury's advocate Jeremy Gauntlett SC QC said such an avenue would be unjust and that it was thought not be pursued in the circumstances. Justice Madondo asked: "Why is clause 3.3 isolated from the rest of the agreement?" Gauntlett said it was based on common sense, practicality and principle. According to Gauntlett, the National Treasury accepted that as regards with what was paid in terms of clauses 3.1 and 3.2 of the agreement (2018/19 and 2019/20 financial years) it was water under the bridge and that to recover anything would require an enrichment action against many thousands of people. "To seek to recover from those concerned would be an enormously difficult exercise, it would raise issues of inequity," he said. All the National Treasury was simply seeking to do, having been alerted to the problem, was to prevent the implementation of further non-compliance with regulations 78 and 79 of the Public Service Regulations, which set out the requirements to be met before a collective agreement is concluded by the government, according to Gauntlett. The Constitutional Court reserved its judgment. Political Bureau <div class="at-below-post addthis_tool"... [View the entire article here](#)