



Big victory for the state as unions lose bid to force public sector wage increases

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Business Maverick Big victory for the state as unions lose bid to force public sector wage increases (Photo: Gallo Images / Nardus Engelbrecht) By Ray Mahlaka Follow 28 Feb 2022 Follow 5 The Constitutional Court's ruling has reinforced the government's powers and discretion to enter into collective agreements or renege on them when it can no longer afford to do so. It also strengthens the state's hand as wage negotiations for 2022 with trade unions start in March. The Constitutional Court has handed the government a huge victory, backing its decision to not award inflation-beating wage increases to 1.2 million public servants in 2020 that could have further weakened South Africa's public finances. In a unanimous judgment handed down on Monday, 28 February, the top court found that the collective agreement detailing wage increases over three years – entered into by the government and trade unions representing public servants in 2018 – was “invalid and unenforceable”. The Labour Appeal Court had found in December 2020 that the collective agreement was invalid. The unions – including the National Education Health and Allied Workers' Union, South African Democratic Teachers' Union, and the Public Servants Association of South Africa – approached the ConCourt in August 2021 to challenge the appeal court's ruling. The ConCourt found that clause 3.3 of the collective agreement was not compliant with sections 78 and 79 of the Public Services Act. This act requires, among other things, the government to enter into collective agreements only if it can afford to do so. The act also outlines the roles and powers of ministers – in this case, the

ministers of finance and public service and administration (responsible for employment conditions in the state) – when concluding collective agreements. Both ministers, in a coalition, have the legal authority to bind the state into collective agreements, such as wage increases for public servants. But the government's negotiations with trade unions over wage increases were sullied from the beginning. On 25 April 2018, Cabinet instructed the Department of Public Service and Administration to conclude a collective agreement with trade unions, detailing wage increases for their public servant members from 2018 to 2020. By then, the cost calculations of the wage increases had not been done by the finance minister and National Treasury. Implementing the wage increases at the time would cost the state R128.5-billion over three years, but this later ballooned by an extra R30.2-billion. Treasury suggested that in order to afford the three-year wage increases for public servants, the government would have to embark on a retrenchment process, cutting 36,000 public sector jobs. Treasury's suggestion was ignored as the Department of Public Service and Administration forged ahead with signing the collective agreement, despite concerns about it being unaffordable. The agreement automatically became binding on the government. The ConCourt found that collective agreement between the government and trade unions did not comply with the requirements of regulations 78 and 79 of the Public Services Act, rendering it "invalid and unlawful, and thus unenforceable". This is because the collective agreement was unaffordable in the first place and proper processes were not followed in concluding it (after all, it was concluded before the process to reduce the headcount in the state ensued). Meaning of the ruling The court ruling has reinforced the government's powers and discretion to enter into collective agreements or renege on them when it can no longer afford to do so. The government reneged on the last leg of the three-year collective agreement in 2020 when it refused to award wage increases of consumer inflation plus 1% – which works out to about 8% – to public servants such as nurses, teachers, doctors and police officers. Finance Minister Enoch Godongwana wants to cut the public sector wage bill, which is the single-largest component of the government's expenditure. The wage bill for 1.2 million public servants is out of control; it exploded from R154-billion in 2006 to R682.5-billion in 2022. Paying public servants makes up about 34% of the government's total expenditure, crowding out spending on crucial service delivery programmes. The ConCourt's ruling will also give Godongwana the upper hand because the government will start wage negotiations for 2022 in March. The government is no longer prepared to enter into costly, multiyear wage increase agreements with public servants. Godongwana has already asked trade unions to moderate their wage-adjustment expectations in 2022 because public finances are weak. Failing this, he issued the threat of reducing headcounts (through retrenchments) to cut the remuneration bill.

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All Comments 5 Rory Macnamara says: 28 February 2022 at 15:50 Good, perhaps this can hasten the demise of negative and useless trade unions who only think in their narrow tunnel vision aided and abetted by outdated political thinking. Log in to Reply rodbraude says: 28 February 2022 at 17:54 Let us hope that this ruling holds water, and the ANC doesn't just ignore it or work around it in their usual devious fashion. Log in to Reply richard harding says: 28 February 2022 at 19:15 Very good news. Log in to Reply Tebogo Phakwe says: 28 February 2022 at 20:47 What makes me go bonkers is most (90%) of these public servants don't even deserve these jobs. Go to any government department after one o'clock in the day, you'll be told the system is offline. On payday you'll be lucky to get even through the doors. The ANC government should realise that if they want a leaner department, they should relook their employment policies. The SOE's should next in line. Log in to Reply Gideon W Swanepoel says: 1 March 2022 at 09:15 FYI Ray: Dear Mr Godongwana, AS THE CONSTITUTIONAL COURT RULED FOR GOVERNMENT IN THE COLLECTIVE WAGE AGREEMENT REACHED IN 2018: Has the time for equal, comprehensive Universal Health Coverage to all state employees and their immediate dependants arrived? This proposal will have a very positive impact on employer/employee relations...

- we propose the employer, to grow employee goodwill, in place of the 2018 wage increase,
- offer equal, comprehensive Universal Health Coverage to all government employees and their immediate dependants instead
- as it will show the employer to be caring, kind and responsible at NO additional cost TO DO SO

1. we herewith offer the Gromed Universal Health Coverage Model© developed as an Employee Wealth Creator UHC-Plan© that adds Cash Benefits to comprehensive Health Benefits, 2. and propose the employer adopt it and implement it as reform model into GEMS to shift GEMS towards UHC in line with NHI objectives and move all 1,2 million government employees and their immediate dependants onto it...
3. We innovatively re-apply the total state-contribution to (all) present Medical Schemes to do so, so there's no additional cost to the employer (employee contribution is by choice). IT WILL

- Protect employees and the employer against unforeseen future Covid 19 costs,
- Make future salary increase negotiations easier,
- And

Promote employee contentment and a settled, well-motivated workforce. Deon Swanepoel Director Log in to Reply... [View the entire article here](#)

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