



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

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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

MEC for Education, KwaZulu-Natal v Singh (1188/2021) [2023] ZASCA 92 (9 June 2023)

Today, the Supreme Court of Appeal (SCA) upheld an appeal with costs against the decision of the KwaZulu-Natal Division of the High Court, Durban, per K Pillay J (the high court), which had granted judgment in favour of Ms Mayadevi Singh, the respondent, for the payment of a sum of just under R1.3 million in respect of a claim in delict for damages for lost income following early retirement for health reasons.

Ms Singh was employed for many years by the Provincial Department of Education, KwaZulu-Natal (the department) as an educator. In July 2011, about 7 years before she would reach the usual compulsory retirement age of 65, the respondent took early retirement. The respondent alleged that she was compelled to that course because she came to suffer from clinical depression as a result of the failure of her employer to take any reasonable steps to prevent the principal of her school from victimising her over a long period. But for that, the respondent alleged, she would have worked until age 65, and in the result, was entitled to be compensated by her employer for the income she lost. The department denied these allegations.

The principal issue before the SCA was whether in the circumstances Ms Singh established wrongfulness, although causation and negligence were also contested. Ms Singh relied on an omission to take steps to prevent psychological or emotional harm to her, and therefore had to establish that circumstances were such that the department came under a legal obligation to act positively to prevent the harm.

The SCA found that it was not disputed that Ms Singh was diagnosed with major depression, and that she blamed the victimisation for the onset of her major (ie clinical) depression; and that further progress in treating Ms Singh's condition would not be achieved unless she was taken out of the environment which she blamed for her condition. The SCA found however that Ms Singh's medical condition did not prevent her from performing her functions as an educator.

In regard to wrongfulness, the SCA found that the enquiry was whether the policy and legal convictions of society, understood consistently with the Constitution, and considerations of reasonableness, justified a conclusion that the 'harm-causing' negligent omissions asserted in this case were actionable in delict.

The SCA found that the terms of the contract of employment between Ms Singh and the department were largely regulated by statutory instruments. Both the victimisation and her illness were recognised in the statutory instruments, which provided remedies in both instances. Ms Singh had a right to lodge

a grievance as contemplated by her statutorily imposed conditions of service. Ms Singh chose not to employ the remedy available to her with regard to her complaint of victimisation.

The SCA found that public and legal policy considerations, and reasonableness, demanded that save in exceptional circumstances, it was proper and sufficient that the statutory and regulatory regime left issues such as those raised by Ms Singh to be dealt with at her request. Allowing a delictual claim along the lines of that advanced by Ms Singh posed a significant threat to the capacity of a department to perform its functions.

The SCA held that wrongfulness was not established. This conclusion meant that Ms Singh's claim ought to have failed in the high court.

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