**NATIONAL ASSEMBLY**

**WRITTEN REPLY**

**QUESTION 1260**

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**INTERNAL QUESTION PAPER: 13/2016**

**1260. Mr G R Davis (DA) to ask the Minister of Basic Education:**

(1) Whether, with reference to a grievance lodged by one of her employees (name and details furnished), her department will redress the grievance in a court of law as recommended by the Public Service Commission (PSC); if not, why not; if so, what are the relevant details;

(2) did she inform the specified employee of her decision regarding the PSC’s recommendations as prescribed in Rule G.2 of the Grievance Rule 2003; if not, why not; if so, what are the relevant details;

(3) did she furnish the PSC with (a) a copy of the letter in which her department communicated the outcome of the investigation to the specified employee and (b) feedback on the decision taken by her regarding the PSC’s recommendations; if not, why not, in each case; if so, what are the relevant details in each case? NW1408E

**REPLY**

1. No, the Department will not approach the court to redress the matter as recommended by the Public Service Commission(PSC).

The reasons are as follows:

In *Khumalo,* the Member of the Executive Council (MEC) for Education in KwaZulu Natal (KZN), approached the court to nullify the promotion of two officials as she believed that there was underhandedness in their appointment. The Court dismissed the application. In *casu*, the MEC argued that the one candidate did not meet the requirement while the other’s Protected Promotion was illegal.

It is important to note that facts of the *Khumalo case* and Mr Mithileni’s grievance are not similar. In *Khumalo*, Mr Krish Ritchie, was given a Protected Promotion after the Department failed to shortlist and appoint him in a position of Chief Personnel Officer. Consequently, the Department (KZN – Education) decided to give him a Protected Appointment to redress their omission.

In the case of Mr Mithileni, both candidates met the requirements, were both shortlisted, interviewed and one was recommended for appointment. Mr Mithileni was the second best candidate. Therefore, the facts in *Khumalo’s* case and those in Mr Mithileni’s grievance are totally unrelated and do not speak to the same questions of law.

1. Yes, Mr Mithileni was informed about the Minister’s decision regarding the PSC’s recommendations as prescribed in Rule G.2 of the Grievance Procedure of 2003. The letter was received and signed for by Mr Mithileni himself.
2. Yes, the Minister furnished the PSC with:

 (a) a copy of the letter in which the Department communicated the outcome of the investigation to Mr Mithileni. The letter to the PSC was sent to the Office of the Public Service Commission on13 April 2016 with attention.

(b) The Minister also furnished the Public Service Commission with feedback on the decision taken by her regarding the PSC’s recommendations.