Reportable

IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE HIGH COURT, CAPE TOWN

CASE NO: 16893/09

In the matter between:

MATHILDA LOUISA WIESE	Applicant
versus	
GOVERNMENT EMPLOYEES PENSION FUND	First Respondent
MINISTER OF FINANCE	Second Respondent
THE PENSION FUND ADJUDICATOR	Third Respondent
CORNELIUS JOHANNES MARX	Fourth Respondent

JUDGEMENT : 1 JULY 2011

BOZALEKJ:

[1] The applicant is the former spouse of a member of the Government Employees Pension Fund ('the Fund'), the first respondent, who, in March 2008, in terms of a settlement agreement which formed part of a divorce decree, was awarded a 25% share of her spouse's pension interest in the Fund. The applicant has been unable to realise this interest, however, since the legislation governing the Fund, unlike that governing private pension funds, only allows for the realisation of such an interest as and when an 'exit event' takes place in relation to the former spouse, such as resignation, termination of employment or death, and no such event has occurred.

[2] As a result of financial hardship the applicant has at all time unsuccessfully sought to realise her share of her former spouse's pension interest in the Fund. Having exhausted all other avenues she now seeks an order that the governing legislation, the Government Employees Pension Law, Proclamation 21 of 1996, ('the Law') is inconsistent with s 9(1) of the Constitution of the Republic of South Africa and is invalid to that extent. She seeks, furthermore, an order whereby,

broadly speaking, certain provisions in the Pension Funds Act 24 of 1956, ('the PFA') which allow for the immediate realisation of pension benefits awarded on divorce to the non-member spouses of members of private pension funds, be read into the 'Law'.

[3] The second, third and fourth respondents are the Minister of Finance (the Minister') who fulfills various functions under the Law, the Pension Fund Adjudicator and the applicant's former spouse. The latter two parties play no active role in the application but the relief sought is opposed, in part, by the Fund and the Minister. The Fund, it is worth noting, has 1.1 million members and 300, 000 pensioners and is by far the largest in South Africa. It is a defined benefit fund which caters primarily for employees of government which in turn is obliged to ensure that the Fund meets its obligations.

THE LEGISLATIVE BACKGROUND

[4] Before dealing with the issues it is necessary to set out the legislative background in so far as it is material.

[5] Prior to the amendment of the Divorce Act, 78 of 1979 ('the Divorce Act') by the Divorce Amendment Act 7 of 1989, a pension interest which had not yet accrued, such as an interest in a pension fund, was not regarded as an asset in the estate of a spouse. After the amendment came into force on 1 August 1989, s 7(7)(a) of the Divorce Act deemed a pension interest to be an asset in the spouse's estate for the purposes of determining patrimonial benefits. In terms of s 7(8)(a) of the Divorce Act, a court granting a decree of divorce may order that any part of a pension interest of a party to the divorce action may be assigned to the other party, and that part shall be paid by that fund to that other party 'when any pension benefits accrue in respect of that member'. The question of when accrual took place (which entitled the former spouse to payment of his/her share of the pension interest) depended on the rules of the particular fund but generally took place on retirement, resignation or some other exit event.

[6] These amendments to the Divorce Act gave rise to various inequities highlighted in two reports of the South African Law Commission, dated March 1995 and June 1999. In the second report, the Commission expressed a preference for the promotion of the 'clean break' principle on divorce which allows the division of a pension interest on divorce and not later, only when an exit event occurs. The Commission recognised that a non-member spouse is prejudiced if the value of his/her benefit is 'frozen' at the date of divorce in that the non-member spouse could not benefit from any interest on or capital growth in his/her portion of the pension interest which, furthermore, could devalue substantially over time.

[7] The Commission's reports led to four sets of amendments to the PFA. First, there was the PFA Amendment Act 11 of 2007, s 28(b) of which amended s 37(D) of the PFA by the addition of sub-paras (d) and (e) to ss 1. These sub-sections provided inter alia that a registered fund may deduct from a member's benefit or minimum individual reserve any amount assigned from

his/her pension interest to a non-member spouse in terms of a decree granted under s 7(8) of the Divorce Act. The PFA Amendment Act further provided that, for the purposes of s 7(8)(a) of the Divorce Act, such pension benefit is deemed to accrue to the member, subject to certain provisos, on the date of the court order. One such proviso is that the non-member spouse has the option to elect that the assigned amount be paid directly to him or her or that it be transferred to an approved pension fund on his or her behalf.

[8] The effect of the amendment was to change the date of accrual for the benefit of a non-member spouse. He or she no longer has to wait until an exit event took place since the benefit awarded to the non-member spouse in terms of the Divorce Act is deemed to have accrued on the date of the divorce order.

[9] These amendments led to a number of problems inter alia in respect of the tax to be paid on the pension interest which led to the second, third and fourth amendments. Section 37A (1)(d) was amended and ss 37A(1)(e) was repealed by s 4(1)(a) and (b) of Act 35 of 2007 as well as sections 16(a) and (b) of the Financial Services Laws General Amendment Act 22 of 2008 and finally by Act 60 of 2008. Three further subsections were added by s 16(c) of Act 22 of 2008.

[10] None of the four sets of amendments to the PFA applied to the Fund. The situation is accordingly that the non-member spouse of a Fund member is treated differently than a non-member spouse of a member of pension fund governed by the PFA.

THE APPLICANT'S CASE

[11] The applicant's case is that this differential treatment of a non-member spouse of a Fund member to that of a non-member spouse of a member of a pension fund governed by the PFA violates the affected party's right, in terms of s 9(1) of the Constitution, to the equal protection and benefit of the law. More particularly, it is contended that the applicant's right of access to social security as entrenched in s 27 (1)(c) of the Constitution, and that of others in her position, is violated.

[12] To all intents and purposes the Fund and the Minister concede that the applicant's right to the equal protection and benefit of the law is breached by the differential impact of the relevant legislation on non-member spouses of members of private pension funds and the Fund. Where the parties differ, however, is what remedy should be afforded the applicant.

THE DECLARATION OF CONSTITUTIONAL INVALIDITY

[13] Testing the constitutionality of the Law, namely the Government Employees Pension Law, Proclamation 21 of 1996, requires the application of the well-known test for a violation of the right to equality, first enunciated by the Constitutional Court in *Harksen v Lane N.O and others* 1998 (1) SA 300 (CC) as follows at para 53:

> '(a) Does the provision differentiate between or categories of people? If so, does the differentiation bear a rational connection to a legitimate government purpose? If it does not then there is a violation of s 8(1). Even if it does bear a rational connection, it might

nevertheless amount to discrimination'.

Assuming the differentiation passes the first test, namely, that of showing a rational connection to a legitimate government purpose, the court embarks upon a two stage analysis to determine whether the differentiation amounts to discrimination. This involves, firstly, establishing whether the differentiation amounts to unfair discrimination and if so, whether the provision can be justified under the limitations clause.

[14] The first leg of the equality test thus determines whether the State, through the impugned legislation, is acting in a rational manner. As was said of the state in *Prinsloo v Van Der Linde and Another* 1997 (3) SA 1012 (CC) at para 25:

'It should not regulate in an arbitrary manner or manifest "naked preferences" that serve no legitimate governmental purpose, for that would be inconsistent with the rule of law and the fundamental premises of the constitutional State. The purpose of this aspect of equality is, therefore, to ensure that the State is bound to function in a rational manner. This has been said to promote the need for governmental action to relate to a defensible vision of the public good, as well as to enhance the coherence and integrity of legislation.'[1]

[15] In *Van der Merwe v Road Accident Fund (Women's Legal Centre Trust as Amicus Curiae)* 2006 (4) SA 230 (CC) the applicant contended that certain provisions of the Matrimonial Property Act, 88 of 1984, violated the equality clause in the Bill of Rights. Embarking on the rationality enquiry, Moseneke DCJ, speaking for the Court, states as follows: 'It is so that laws rarely prescribe the same treatment for everyone. Yet it bears repetition that when a law elects to make differentiation between people or classes of people it will fall foul of the constitutional standard of equality if it is shown that the differentiation does not have a legitimate purpose or a rational relationship to the purpose advanced to validate it. Absent the pre-condition of a rational connection the impugned law infringes, at the outset, the right to equal protection and benefit of the law under s 9(1) of the Constitution. This is so because the legislative scheme confers benefits or imposes burdens unevenly and without a rational criterion or basis. That would be an arbitrary differentiation which neither promotes public good not advances a legitimate public object. In this sense, the impugned law would be inconsistent with the equality norm that the Constitution imposes, in as much as it breaches the "rational differentiation" standard set by s 9(1) thereof.'[2]

[16] In the present matter it seems clear that the differentiation is between non-member spouses of funds governed by the PFA ('private pensions funds') and non-member spouses of members of the Fund (and other pension funds not governed by the PFA). The differentiation arises out of the legislature's failure to apply the 'clean break' principle on divorce to the latter class of persons. Neither the Fund nor the Minister sought to contend that the differentiation in question bears a rational connection to a legitimate government purpose and there is none which readily occurs to me.

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1 Van der Merwe at para 48

2 at para [45]

[17] There are of course sound arguments why pension fund members and their former spouses should not be permitted to withdraw pension benefits - the so called 'preservation principle' - but, given that the 'clean break' principle is now applied to the divorced spouses of private pension fund members, there appears to be no rational reason why this should be withheld from their counterparts on divorce from a member of the Fund (or any other public pension fund, for that matter).

[18] The prejudice arising out of this differentiation is obvious. The former class of persons can gain immediate access to their share of their former spouse's pension interest, and can obtain an immediate cash payment in respect thereof or transfer such benefit to another pension fund. By contrast, the divorced spouse of a member of the Fund (and other funds not governed by the PFA) can only gain access to his/her share of a former spouse's pension fund interest when an exit event occurs which, of course, may be many years away. During that period the divorced spouse is denied the benefits of any growth in his/her share of the pension interest.

[19] Whilst it is conceivable that a settlement agreement or court order concluded on divorce may alleviate such prejudice by various means, for example, by increasing the divorced spouse's share of the pension interest or awarding compensation out of other assets, such measures do no more that mitigate the inequity in some cases. This is not least because the timing of the exit event will often not be known and because in certain cases the pension interest may be the only significant asset, thus leaving little room for alternative compensation. In any event, as was held in *Van der Merwe*, the constitutional validity or otherwise of legislation does not derive from the persona! choice, preference, subjective consideration or other conduct of the person affected by the law.[3]

[20] The irrationality and unfairness of the differentiation appears to be recognised in influential government circles. On 23 February 2011 the National Treasury issued a public document entitled 'A safer financial sector to serve South Africa better'. At page 36 of the document the following position is adopted by the National Treasury:

> 'Eighth proposal: Public entities and funds operating in the financial system should not be exempted from general legislation and regulatory standards that apply to the private sector institutions and funds. Where there are exemptions, they should be transparent, and subject to review on a regular basis.
>
> Many public pension funds (such as the Government Employees Pension Fund, Transnet Pension Fund, and Municipal Pension Fund) are exempted from the
> Pension Funds Act, and often they have their own legislation.....
> Public
> financial institutions or funds should not be exempted from general laws and the ambit of regulations as these exemptions risk undermining the integrity of the regulatory system, and also create the false impression that the standards applied to public entities are less rigid than those applied to the private sector.'

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[3] at paragraph [61]

[21] At pages 56 - 57 it is stated:

> 'Public sector pension funds (such as those of state-owned entities, the Government Employees Pension Fund or GEPF and local government pensions) are characterised by fragmented rules and supervision for example the largest pension scheme in the country, the Government Employees Pension Fund, is self regulated and has different rules compared to other public sector pension funds. This is the case with many other government pension schemes. Although the Pensions Funds Act ("PFA") is a relatively old piece of legislation, having been enacted in 1956, and in need of modernising, it has managed to keep pace with certain key developments. For example the PFA:
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> • Allows divorcees to immediately receive a share of their member-spouse pension upon divorce (if the benefit is prescribed by the marriage contract), and not wait for the member-spouse to first retire [footnote in original text: "This rule gives effect to the Divorce Act and Constitution"]. A number of public sector pension funds do not incorporate these modern rules, and therefore place their members at a disadvantage.'

[22] It was common cause between the parties that the provisions of the Law, more particularly s 21 thereof, preclude the Fund from applying the 'clean break' principle as is provided for by s 37D(1)(d) of the PFA. At the very least the Minister and the Fund have been advised that this is the position and appears to have accepted such advice.

[23] In the absence of any purpose being proffered by the respondents to validate the impugned provision, and in the light of their concessions regarding the unconstitutionality of the differentiation, it is unnecessary to embark on a justification enquiry.

[24] In the result I am satisfied that the failure of the Law to provide for the application of the 'clean break' principle renders it to that extent inconsistent with s 9(1) of the Constitution inasmuch as it sanctions unequal treatment or differentiation of a class of persons, which differentiation bears no rational connection to a legitimate government purpose. Accordingly the applicant is entitled to a declaration of constitutional invalidity and an appropriate remedy.

THE APPROPRIATE REMEDY

[25] Section 172 of the Constitution deals with the powers of the courts in constitutional matters and provides as follows:

> '(1) When deciding a constitutional matter within its power, a court -
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> a) must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency; and
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> b) may make an order that is just and equitable, including -
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> i) an order limiting the retrospective effect of the declaration of invalidity; and
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> ii) an order suspending the declaration of invalidity

for any
period and on any conditions, to allow the competent
authority to correct the defect.

(2) (a) .....

(b) A court which makes an order of constitutional invalidity may grant a temporary interdict or other temporary relief to a party, or may adjourn the proceedings, pending a decision of the Constitutional Court on the validity of that Act or conduct.'

[26] Argument in this matter centred largely around the form of relief to be granted to the applicant consequent upon any finding of constitutional invalidity, the main point of difference being whether the Court should fashion an order 'reading-in' various provisions into the Law. Such a remedy was opposed by the Fund and the Minister in favour of a suspension of any declaration of invalidity to allow the legislature an opportunity to remedy the defect, but coupled with a 'reading-in' order which would take effect if the legislature fails to remedy the violation within the stipulated period.

[27] During argument the parties refined their proposals and reached agreement on a proposed reading-in order, should it be adopted, which would permit the Fund to regulate payments in respect of a pension interest to the former spouse of a member in the same manner and subject to the same taxation requirements as private pension funds governed by the PFA. I set out the agreed wording, envisaged as being read into the Law either immediately or as a default mechanism in the event that Parliament fails to remedy the breach:

'24A The Fund may make certain deductions

1) The Fund may deduct from the member's pension interest, as defined in the Divorce Act, 70 of 1979,

a) any amount assigned from such interest to a former spouse in terms of a decree granted under s 7(8)(a) of the Divorce Act, 70 of 1979, and
b) employees' tax required to be deducted or withheld in terms of the provisions of the Income Tax Act, 1962 (Act 58 of 1962) as a result of the deductions referred to in subparagraph (a).

2) In the event of any loans or guarantees having been made or granted as contemplated in the Rules of the Fund, s 37D(3)(a) of the Pension Funds Act, 24 of 1956, shall apply mutatis mutandis.

3) The provisions of s37D(3)(d) and 37D(4)-(5) of the Pension Funds Act, 24 of 1956, shall apply mutatis mutandis in respect of any deduction and payment to a member's former spouse in terms of ss 1; provided that any portion of pension interest assigned in the decree of divorce or dissolution of customary marriage granted prior to [date of the order] is deemed to have accrued on [the date of the order].

4) The following provisions of the Second Schedule to the Income Tax Act, 58 of 1962, will be read as referring, mutatis mutandis, to s 24A of the Government Employees Pension Law, Proclamation 21 of 1996, with effect from the date of this order;

(a) ltem2(1)(b)(iA);

(b) Item 2(2)(a); and

(c) Item 2(B).'

[28] The applicant also sought an order of costs against the Fund and the Minister.

THE READING-IN REMEDY

[29] in *Van der Merwe* the Court, approving a reading-in remedy, noted that useful guidelines had been set in previous cases and stated: *The cured' provision must be consistent with the Constitution and its basic values. The result of the curative process must interfere with the statute as little as possible. The remedial steps should be capable of sufficient precision and should be as faithful as possible to the legislative scheme at hand. Lastly, the resort to the surgical remedies of severance and reading inshould not be preferred if they are likely to lead to an 'unsupportable budgetary intrusion*[4].

[30] In *National Coalition for Gay and Lesbian Equality v Minister of Home Affairs* 2000 (2) SA 1 (CC) the Court stated:

> 'In deciding to read words into a statute, a Court should also bear in mind that it will not be appropriate to read words in, unless in doing so a Court can define with sufficient precision how the statue ought to be extended in order to comply with the Constitution Moreover, when reading in (as when severing) a Court should endeavour to be as faithful as possible to the legislative scheme within the constraints of the Constitution'[5].

[31] Other principles to be drawn from the cases are that an 'unsupportable budgetary intrusion' would bar a reading-in that would otherwise be valid and furthermore a reading-in does not give the judiciary the final word on what the law is. As Bishop notes in *Constitutional Law of South Africa, Woolman and others, 2nd edition, Juta Vol 1,* this still 'it merely starts a conversation between the legislature and the courts[1]. He comments further citing *Dawood v Minister of Home Affairs*[6] that *'....because reading-in generally provides the Court with more options than the other remedies, courts should be especially cautious in this domain and are best advised to leave the choice to the legislature'.*[7]

[32] In the present matter the reading-in remedy is opposed by the Fund, firstly on the ground that it has already been engaging with the Minister regarding an amendment to the Law and it would thus be inappropriate for the Court to intervene where steps are being taken with a view to amending the relevant legislation and; secondly, since a reading-in is in its nature a temporary remedy, and in view of indications that various changes may well be made to the pensions dispensation as a whole, including the Law, it would be inappropriate to grant such a remedy only for the Fund to be subjected in due course to additional changes in this area.

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[4] at para 73

[5] at para 75

[6] *Dawood and Another; Shalabi and Another, Thomas and Another v Minister of Home Affairs and Others* 2000 (3) SA 936 (CC) at para 64

[7] at page 9-106/107

[33] The Minister's objections to the reading-in remedy focus on the policy-laden choices which, it contends, are involved in remedying the constitutional defect now identified. These, it argues, are much better left to the legislature to grapple with, rather than such choices being usurped by the Court, particularly where this is likely to be only a temporary measure.

[34] These policy choices or issues include the calculation of the remaining benefit due to the member if the non-member's share is deducted before the former is due. Parliament may wish to prescribe how such remaining benefit is to calculated rather than leave this to the Fund's Board, given that the Fund is a public fund, relying on the fiscus and catering for public servants.[8]

[35] Another such issue is the approach to be taken to the so called 'preservation principle', namely, that retirement savings be preserved for exactly that eventuality. Whilst the Law Commission recommended that this principle be the basis of the manner in which retirement savings are split, the amended PFA allowed immediate payment of retirement benefits to a non-member spouse on divorce. There are indications, however, in the National Treasury's February 2011 policy document that this issue is being reconsidered in general. Under the heading *"Withdrawals pose a policy challenge"* it states *'The introduction of mandatory preservation is therefore critical and National Treasury plans to extensively consult all relevant stakeholders'.*

[36] Yet a further policy issue is to what extent any revisionary measure should be retrospective, taking into account that affected parties may have made compensatory arrangements in settlement agreements, thereby raising the possibility of a non-member spouse benefitting twice.

[37] in my view the legislature could well exercise a range of choices which may be constitutionally defensible and this must be a major factor suggesting that this Court should be hesitant in before resorting to an immediate reading-in remedy. In certain areas, and subject always to constitutional limits, Parliament may well be entitled to make different policy choices for the Fund from those made for private funds. Unless and until Parliament makes such choices (assuming it does so), there is no way to determine the consistency of those choices with the Constitution.

[38] It must also be taken into account that the proposed reading-in encompasses the incorporation of provisions which, in relation to the Fund, could have far-reaching and unforeseen financial consequences. The field of pension law, particularly where it intersects with income tax law, is a specialised field. In this highly technical area I consider that the Court should be wary of granting an immediate and extensive reading-in remedy when the full legislative process of drafting, publication and consultation may bring to light difficulties or unintended consequences presently unforeseen by the parties or the Court.

[39] Furthermore, at a practical level the proposed reading-in is a relatively complex formulation.

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[8] at page 9-106/107

Although this is not in itself a bar to such a remedy, it does constitute far-reaching interference with the Law as it stands and in my view is a strong counter-indication to an immediate reading-in remedy.

[40] Taking all these factors into account, but most notably the indications that a process of overall legislative review and reform may be imminent and the far-reaching nature of the proposed reading-in, I have come to the conclusion that granting an immediate reading-in remedy would be inappropriate. I consider instead that it would be just and equitable tosuspend the declaration of invalidity and leave the precise nature of the remedial provisions to the legislature. Notwithstanding the conclusion which I have reached regarding the adoption of a reading-in order, I nonetheless consider that provision should be made for a default provision remedying the constitutional defect in the event that Parliament does not do so timeously, thereby leaving a lacuna. Such an order was made by the Constitutional Court *in Minister of Home Affairs and another v Fourie.*[9]

[41] Neither am I persuaded that this is an appropriate case to grant interim relief to the applicant or others in her position. Such relief is, in any event, difficult to formulate without causing considerable administrative difficulties and second-guessing the legislative process. I accept that the applicant has been pressing for years for a solution to the problems thrown up by the differentiating legislation in this field of social welfare. There are indications in her case, however, most notably in the terms of the consent paper wherein she acquired her share of the pension interest that, notwithstanding her protestations, she may well have been aware that her share of her spouse's pension interest was not immediately payable.

[42] On behalf of the Minister and the Fund it was contended that Parliament should be granted 18 months to correct the defect. However, a theme of the Minister's reply to the applicant's challenge is that his department is already engaged in a process of legislative review in this area. Furthermore, that department has, by its own admission, been aware of the problem for some time. In the circumstances, and taking into account that any time limit will only commence once the Constitutional Court pronounces on this matter, I consider that a period of 12 months within which the constitutional defect must be remedied should be adequate.

COSTS

[43] As far as costs are concerned I can see no reason why the applicant should not be granted her costs notwithstanding any real or perceived weaknesses in her individual case. She comes before the court not only in her own right but as an informal representative of class of persons who are suffering unjustified discrimination by reason of the disparity between the provisions of the law relating to private pension funds and the Fund. In *Biowatch Trust v Registrar, Genetic Resources and Others*[10] the Constitutional Court stated:

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[9] *Minister of Home Affairs and Another v Fourie and Another (Doctors for Life International and Others, Amici Curiae): Lesbian and Gay Equality Project and Others* v *Minister of Home Affairs and Others* 2006 (**1**) S A 524 (CC)

[10] 2009 (6) SA 232 (CC) para 24 [also reported at 2009 (10) BCLR 1014 (CC)]

'Particularly powerful reasons must exist for a court not to award costs against the State in favour of a private litigant who achieves substantial success in proceedings brought against it.'

[44] The Fund contends, with some justification, that it should not be held liable for costs when it is statutorily blocked from introducing an amending dispensation for spouse non-members who find themselves in the position of the applicant. There is, however, no reason why the Minister responsible for the legislation in question should not bear the applicant's costs.

[45] For these reasons the following order is made:

1. It is declared that the Government Employees Pension Law, Proclamation 21 of 1996, is inconsistent with section 9(1) of the Constitution of the Republic of South Africa, Act 108 of 1996, insofar as it fails to afford to former spouses of members of the Government Employees Pension Fund the same rights and advantages as are afforded to former spouses of members of funds subject to the Pension Funds Act, 24 of 1956, more particularly those contained in section 37D(1)(d), (3) (4) and (5), and is invalid to the extent of that inconsistency.

2. This declaration of invalidity is suspended for 12 months to allow Parliament to correct the defect.

3. Should Parliament not correct the defect within this period, the following provisions will be read in to the Government Employees Pension Law with effect from the date of this order:

'24A The Fund may make certain deductions

1) The Fund may deduct from the members pension interest, as defined in the Divorce Act, 70 of 1979,

a) any amount assigned from such interest to a former spouse in terms of a decree granted under s 7(8)(a) of the Divorce Act, 70 of 1979, and

b) employees' tax required to be deducted or withheld in terms of the provisions of the Income Tax Act, 1962 (Act 58 of 1962) as a result of the deductions referred to in subparagraph (a).

2) In the event of any loans or guarantees having been made or granted as contemplated in the Rules of the Fund, s 37D(3)(a) of the Pension Funds Act, 24 of 1956, shall apply mutatis mutandis.

3) The provisions of s37D(3)(d) and 37D(4)-(5) of the Pension Funds Act, 24 of 1956, shall apply mutatis mutandis in respect of any deductions in payment to a member's former spouse in terms of ss 1; provided that any portion of pension interest assigned in the decree of divorce or dissolution of customary marriage granted prior to 1 July 2011 is deemed to have accrued on 1 **July 2011.**

4) The following provisions of the Second Schedule to the Income Tax Act, 58 of 1962, will be read as referring, mutatis mutandis, to s 24A of the Government Employees Pension Law, Proclamation 21 of 1996, with effect from the date of this order;

a) Item 2(1)(b)(iA);

b) Item 2(2)(a); and

c) Item 2(B).'

4. The second respondent is ordered to pay the applicant's costs including the cost of two counsel.

5. This order is referred to the Constitutional Court for confirmation of the order of constitutional invalidity.

L.J. BOZALEK, J
Judge of the High Court