

No. 1236 13 July 1994

**NO. 10 OF 1994: JUDGES' REMUNERATION AND CONDITIONS OF EMPLOYMENT
AMENDMENT ACT, 1994.**

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:

GENERAL EXPLANATORY NOTE:

Words between asterisks indicate omissions from existing enactments.

Words between pointed brackets indicate insertions in existing enactments.

ACT

To amend the Judges' Remuneration and Conditions of Employment Act, 1989, in order to provide for the remuneration and conditions of employment of the President and judges of the Constitutional Court; and to provide for incidental matters.

(English text signed by the President.) (Assented to 5 July 1994.)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 88 of 1989

1. Section 1 of the Judges' Remuneration and Conditions of Employment Act, 1989 (hereinafter referred to as the principal Act), is hereby amended-

(a) by the substitution for the definition of "active service" of the following definition:

"active service" means any service as a judge in a permanent capacity, and includes-

(a) service in an acting capacity for any continuous period immediately prior to assuming office as a judge in a permanent capacity; *and*

(b) any other continuous period of longer than 29 days of such service in an acting capacity prior to assuming office as a judge in a permanent capacity; *and*

(c) service by a judge of the Supreme Court as a constitutional judge pursuant to an appointment as such a judge in terms of the Constitution,

irrespective of whether or not such service was performed prior to or after the fixed date;"

(b) by the insertion after the definition of "active service" of the following definition:

'constitutional judge' means any person holding the office of-

(a) President of the Constitutional Court; or

(b) *judge of the Constitutional Court*;"

(c) by the substitution for the definition of "judge" of the following definition:

" judge"-

(a) means any person holding, or any person who at the fixed date held, the office of-

(a) (i) Chief Justice of South Africa;

(b) (ii) judge of the Appellate Division of the Supreme Court of South Africa; **or**

(c) judge president, deputy judge president or judge of any provincial or local division of the ***said court Supreme Court of South Africa***; and

(b) *in Chapter 4 includes any person holding the office of constitutional judge*;"

(d) by the substitution for the definition of "revenue" of the following definition:

"revenue" means the ***State National Revenue Fund***;" (e) by the substitution for the definition of "salary" of the following definition:

"salary" means-

(a) *in Chapter 2*, subject to the provisions of subsection (2), the annual salary and the allowance payable to a judge in terms of section 2; *and*

(b) *in Chapter 3, the annual salary payable to a constitutional judge in terms of section 10A*;"

by the substitution for subsection (2) of the following subsection:

"(2) If a judge who has been seconded for active service or service as a judge of ***a state the territory of which formerly formed part of the Republic the High Court or Supreme Court of any of the former independent states of Transkei, Bophuthatswana, Venda or Ciskei*** dies or is discharged from active service while holding the office of chief justice of the High Court or *Supreme Court of that such* a state in a permanent capacity, his *or her* salary shall for the purposes of this Act be deemed to be that of a judge president of a provincial division of the Supreme Court of South Africa."; and

(g) by the substitution for subsection (3) of the following subsection:

"(3) For the purposes of subsection (1) 'service as a judge' includes service performed by a judge who has been seconded to serve as a judge of ***a state the territory of which formerly formed part of the Republic the High Court or Supreme Court of any of the former independent states of Transkei, Bophuthatswana, Venda or Ciskei***, while he *or she* is so seconded and so serves.".

Amendment of section 2 of Act 88 of 1989, as amended by section 8 of Act 157 of 1993

2. Section 2 of the principal Act is hereby amended-

(a) by the substitution for subsection (3) of the following subsection:

"(3) (a) *A copy of a proclamation issued under subsection (1) shall be **laid upon the Table in** submitted to Parliament within 14 days after **it was published in the Gazette if Parliament is then in session or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session** publication thereof.*

(b) If such a proclamation is rejected by all three Houses of Parliament by resolution passed during the same session in which it was tabled, that proclamation shall lapse on the date on which it was rejected by the last House. If Parliament rejects such proclamation or any provision thereof, such proclamation or provision shall thereafter cease to be of force and effect to the extent to which it was so rejected but without prejudice to the validity of anything done in terms of such proclamation up to the date upon which it so ceased to be of force and effect, or to any right, privilege, obligation or liability acquired, accrued or incurred as at the said date under and by virtue of such proclamation.

(c) The provisions of paragraph (b) shall not affect the validity of anything done in terms of such a proclamation until the date upon which it lapsed, or any right, privilege, obligation or liability already acquired, accrued or incurred on the said date in terms thereof."; and

(b) by the substitution for subsection (5) of the following subsection:

" (5) If a judge who has been seconded for service as a judge of the High Court or Supreme Court of **a state the territory of which formerly formed part of the Republic** any of the former independent states of Transkei, Bophuthatswana, Venda or Ciskei holds the office of chief justice of that High Court or Supreme Court in a permanent or acting capacity, and if the amount of the salary and allowance payable to him or her in terms of subsection (1) is less than the amount of the salary and allowance payable in terms of that subsection to a judge president of a provincial division of the Supreme Court of South Africa, he or she shall, in addition to the salary and allowance payable to him or her as aforesaid, be paid an allowance equal to the difference between the amount of the salary and allowance payable to him or her as aforesaid and the amount of the salary and allowance payable as aforesaid to such a judge president."

Substitution of section 4 of Act 88 of 1989

3. The following section is hereby substituted for section 4 of the principal Act:

"Continuation, of active service by certain judges

4. (1) A judge who on attaining the age of 70 years has not yet completed 15 years' active service, may continue to perform active service to the date on which he or she completes a period of 15 years' active service or attains the age of 75 years, whichever occurs first, whereupon he or she shall forthwith be discharged from active service.

(2) *A judge who has been appointed as a constitutional judge in terms of the Constitution, and whose term of office as constitutional judge has not yet expired on the date when such judge is discharged from active service in terms of paragraph (a) or (b) of section 3(1) or subsection (1), shall continue to serve as constitutional judge until his or her term of office as such a judge expires."*

Amendment of section 7 of Act 88 of 1989

4. Section 7 of the principal Act is hereby amended-

(a) by the substitution for subsection (1) of the following subsection:

"(1) A judge who has been discharged from active service, except a judge who has been discharged from

active service in terms of section 3(1)(b), (c) or (d), *shall, subject to subsection (2A)*, be available to perform service until he *or she* attains the age of 75 years, for a period or periods which, in the aggregate, amount to three months a year, if his *or her* services are, after consultation with the Minister, requested by the Chief Justice or the judge president in whose area of jurisdiction he *or she* resides or of the division to which he *or she* was attached when discharged from active service, or with his *or her consent*, any other judge president, in consultation with the Chief Justice or the said judge president, as the case may be, and that judge's mental and physical health enable him *or her* to perform such service: Provided that a judge shall not be precluded from voluntarily performing more than three month's service, if his *or her* services are so requested: Provided further that a judge shall perform service as mentioned in paragraph (b), (c), (d) or (e) of subsection (2) only with his *or her consent*.";

(b) by the substitution for the words preceding paragraph (a) of subsection

(2) of the following words:

"For the purposes of **this section** subsection (1) and subject to subsection (2A) 'service' means-";

(c) by the substitution for paragraph (d) of subsection (2) of the following paragraph:

"(d) service as a judge of **a state the territory of which formerly formed part of the Republic** the High Court or Supreme Court of any of the former independent states of Transkei, Bophuthatswana, Venda or Ciskei;"

(d) by the insertion after subsection (2) of the following subsection:

"(2A) A judge who performs service as a constitutional judge after he or she has been discharged from active service, shall for the purposes of this Act be deemed to perform service as contemplated in subsection (1).";

(e) by the substitution for subsection (5) of the following subsection:

"(5) (a) The registrar of the division of the Supreme Court where a judge performs service in terms of subsection (1), shall notify the Director-General: Justice immediately of the commencement and duration of the service.

(b) The registrar of the Constitutional Court shall notify the Director-General: Justice immediately of the commencement and duration of service performed by a judge in terms of subsection (2A)."; and by the substitution for subsection (6) of the following subsection:

"(6) The Director-General: Justice shall keep a register of all service performed by judges in terms of **subsection** subsections (1) and (2A).".

Amendment of section 8 of Act 88 of 1989

5. Section 8 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

(b) in the case of a surviving spouse of a judge who died while performing active service as a judge, equal to two thirds of the amount to which that judge would have been entitled if he or she was discharged from active service *in terms of section 3(1)(a)* on the date of his *or her* death.".

Amendment of section 10 of Act 88 of 1989

6. Section 10 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) A judge who holds office in a permanent capacity, who already has attained the age of 65 years and has performed 15 years' active service **and who informs the Minister** may resign from office by notice in writing to the President that he or she no longer wishes to serve in the office of judge, **shall be removed by the State President from that office** and shall vacate his or her office upon acceptance of such resignation."

Insertion of Chapter 3 in Act 88 of 1989

7. The following Chapter is hereby inserted in the principal Act after section 10:

"CHAPTER 3

Provisions applicable to the President and judges of the Constitutional Court exclusively

Remuneration of constitutional judges

10A. (1) Any person who is not a judge of the Supreme Court and who holds office as a constitutional judge shall in respect thereof, in addition to the amounts referred to in section 12, be paid a monthly salary at a rate determined from time to time by the President by proclamation in the Gazette: Provided that such salary shall not be less than that of a judge of the Appellate Division of the Supreme Court.

(2) A judge of the Supreme Court who has been appointed as a constitutional judge shall, for the duration of his or her term of office as a constitutional judge, in addition to his or her salary referred to in section 2, be paid a monthly allowance equal to the difference, if any, between his or her monthly salary and the salary of a constitutional judge payable in terms of subsection (1).

(3) The provisions of subsection (3) of section 2 shall apply mutatis mutandis in respect of a proclamation issued under subsection (1).

(4) The salary and amounts payable in terms of subsection (1) shall be paid out of revenue.

(5) If a judge to whom a salary is payable in terms of subsection (1) dies, the payment of his or her salary shall cease with effect from the first day of the month following the month in which he or she died.

(6) No constitutional judge shall, without the consent of the Minister accept, hold or perform any other office of profit or receive in respect of any service any fees, emoluments or other remuneration apart from his or her salary and any amount which may be payable to him or her in his or her capacity as such a judge.

Vacation of office by constitutional judges

10B. (1) A constitutional judge-

(a) who has been appointed President of the Constitutional Court under section 97(2) of the Constitution, shall vacate his or her office upon the expiry of his or her term of office referred to in that section; and

(b) who has been appointed as such under section 99(1) of the Constitution, shall vacate his or her office upon the expiry of his or her term of office referred to in that section.

(2) A constitutional judge may resign from office by notice in writing to the President and shall vacate his or her office upon acceptance by the President of such resignation.

Gratuity payable to constitutional judges after vacation of office

10C. (1) A constitutional judge who is not a judge of the Supreme Court and has vacated his or her office in terms of section 10B(1), shall be paid a gratuity calculated in accordance with the formula-

$$D - X^2 X (E + 3)^7$$

in which formula the factor

(a) D represents the salary which at the time of his or her vacation of office was applicable to the office concerned; and

(b) E represents the period in years of his or her period in such office.

(2) A constitutional judge who is not a judge of the Supreme Court and has vacated his or her office in terms of section 10B(2), shall be paid a gratuity calculated in accordance with the formula- $D - X^2 X E^7$

in which formula the factor-

(a) D represents the salary which at the time of his or her vacation of office was applicable to the office concerned; and

(b) E represents the period of his or her term in such office, which shall be calculated by the year and the month, and fractions of a month shall be taken into account.

(3) The provisions of subsection (7) of section 6 shall apply mutatis mutandis in respect of any gratuity payable in terms of this section.

Amount payable to surviving spouse of constitutional judge

10D. The surviving spouse of a constitutional judge who was not a judge of the Supreme Court and who died before his or her term of office as a constitutional judge has expired, shall be paid an amount equal to the amount of the gratuity which would in terms of section 10C(2) have been payable to such judge had he or she not died but, on the date of his death, vacated his or her office in terms of that section: Provided that factor E in the formula referred to in section 10C(2) shall be deemed to be not less than 4.

Service by constitutional judge who is appointed as a judge

10E. If a constitutional judge is appointed as a judge of the Supreme Court during his or her term of office as a constitutional judge, his or her term of office as a constitutional judge shall, for the purposes of this Act, be deemed to be active service."

Amendment of section 11 of Act 88 of 1989

8. Section 11 of the principal Act is hereby amended by the substitution for the expression "Minister of Transport Affairs" of the expression "Minister of Transport".

Amendment of section 12 of Act 88 of 1989 as amended by section 71 of Act 129 of 1993

9. Section 12 of the principal Act is hereby amended-

(a) by the substitution for the words preceding paragraph (a) of subsection

(1) of the following words:

"The **State** President may, after consultation by the Minister with the Chief Justice, the *President of the Constitutional Court* and the judges president of the respective divisions, make regulations as to-";

(b) by the substitution for paragraph (c) of subsection (1) of the following paragraph:

(c) the method of transport of such judges, and of judges on their discharge from active service *or their vacation of office* or removal from office, and of judges in the performance of service in terms of section 7, and of the members of their families and of the effects of judges or judges who have been discharged from active service, *or* removed from office *or who have vacated their offices* or judges who perform service in terms of section 7 or deceased judges, the amounts to be paid to judges or acting judges in connection with transport and subsistence, and the circumstances in which any such transport may be provided and any such amounts may be paid;"; and

(c) by the substitution for paragraph (e) of subsection (1) of the following paragraph:

"(e) the amounts payable to judges of the Appellate Division *and of the Constitutional Court* in connection with their accommodation. ".

Amendment of section 15 of Act 88 of 1989

10. Section 15 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The provisions of this Act shall, subject to the provisions of subsection (2), apply to all judges who on the fixed date have in terms of section 10 of the Supreme Court Act, 1959 (Act No. 59 of 1959), been appointed as judges or who are thereafter thus appointed, and to all constitutional judges who have in terms of the Constitution been thus appointed."

Insertion of headings in Act 88 of 1989

11. The principal Act is hereby amended-

(a) by the insertion before section 1 of the following heading:

"CHAPTER 1

Definitions";

(b) by the insertion before section 2 of the following heading:

"CHAPTER 2

Provisions applicable to the Chief Justice and judges of the Supreme Court exclusively"; and

(c) by the insertion before section 11 of the following heading:

"CHAPTER 4

General Provisions".

Substitution of expression "State President" in Act 88 of 1989

12. The principal Act is hereby amended by the substitution for the expression "State President", wherever it occurs, of the expression "President".

Short title and commencement

13. (1) This Act shall be called the *Judges' Remuneration and Conditions of Employment Amendment Act, 1994*. (2) Section 5 shall be deemed to have come into operation on 1 April 1989.
