



Judgment No. 2020-UNAT



JUDGE SABINE KNIERIM , P

- (1) GS 62 and No 22, both effective 1 June 2013, payable only to staff recruited on or after one November 2014. Revised net salaries reflect downward adjustment of (-) 13.4 per cent for GGSS and (-) 19.4 per cent for NNOO.
- (2) Amend [] one to GS 61 and No 21, effective 1 July 2012, payable to eligible staff already on board prior to one November 2014, the amendments are issued to reflect revised allowances.

(BBB) Revised allowances in rupees net per annum are as follows:

- (1) Child, per child, subject to maximum of six children
 - a. 23,511 applicable to staff members for whom the allowance becomes payable on or after one November 2014;
 - b. 27,156 applicable to staff members for whom the allowance becomes payable prior to one November 2014;
- (2) First language

the cases to the Dispute Tribunal with directions to permit the Appellants to file their applications. ²

5. On 30 May 2019, the Dispute Tribunal in Geneva issued six Judgments: No. UNDT/2019/099 (Prasad et al. v. Secretary -General of the United Nations), No. UNDT/2019/100 (Thomas et al. v. Secretary-General of the United Nations), No. UNDT/2019/101 (Gera et al. v. Secretary-General of the United Nations), No. UNDT/2019/102 (Bhatia et al. v. Secretary -General of the United Nations), No. UNDT/2019/103 (Manoharan Chandran Sharma Subramanian Naik Siddiqui v. Secretary-General of the United Nations), and No. UNDT/2019/104 (Jaishankar Bharati v. Secretary-General of the United Nations). On 28 June 2019, the Dispute Tribunal issued Judgment No. UNDT/2019/121 (Alex Arora et al.; Chaturvedi et al.; Daniel et al.; and Kapoor et al. v. Secretary -General of the United Nations).³

6. The UNDT found that all the applications were not receivable *ratione materiae*, because the Appellants had failed to comply with the compulsory requirement of requesting a management evaluation before applying to the UNDT and the UNDT could not waive such a mandatory requirement. The cases also did not fall under the exception to the requirement to request management evaluation since they were neither of a disciplinary nature , nor had they been taken by a technical body.

7. While the Appellants argued that they had relied on a previous position taken by the Administration in *Tintukasiri et al.*⁴ whereby requests for management evaluation were not receivable if a decision was taken pursuant to the advice from the Local Salary Survey Committee (LSSC) in conjunction with salary survey specialists, and as such a technical body under the terms of Staff Rule 11.2.(b), the UNDT held that the position adopted by the Management Evaluation Unit (MEU) could not lead the Appellants to build a legitimate

in Tintukasiri et al. was made public in two judgments and the Appellants had legitimate reasons to rely on these precedents. The UNDT incorrectly applied the Appeals Tribunal's Judgment in the Gehr case in which no evidence was before the Tribunals that the Secretary-General had made a determination pursuant to the

MEU's position at the time, the Secretary-General has not demonstrated that the MEU would have indeed genuinely undertaken a review of the contested decision. The Secretary-General abused his authority under Staff Rule 11(2)(b) by contradicting his own decisions and by making inconsistent submissions before the Tribunals. By failing to act fairly, justly and transparently, the Administration impermissibly sought to lead the Appellants into error as to the proper procedure for contesting the impugned decisions, which, in turn, affected their fundamental right to have access to justice. It is a general principle of administrative law that procedural rules regarding time limits and receivability should not unduly impede the right to have access to justice, particularly in situations where such rules have been misused or misapplied by the Administration.

18. Assuming *arguendo* that no determination had been made, the Secretary-General's silence ought to have been interpreted in favour of receivability. Under the Statute of the International Civil Service Commission (ICSC), the ICSC shall establish the methods by which the principles for determining conditions of service should be applied. The methodology makes it clear that the role of salary survey specialists is to provide the technical expertise required to conduct a salary survey and that the conduct of the survey is largely a technical exercise. The Secretary-General has no discretionary power with respect to the

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decision for management

recounted that the MEU had rejected the management evaluation requests deeming them not receivable, but the Tribunals did not endorse the receivability finding made by the MEU.

25. Finally, the UNDT correctly applied the Appeals Tribunal's jurisprudence to this case. As in Gehr, there was no evidence before the UNDT that the Secretary-General had made a determination that the LSSC constituted a technical body pursuant to Staff Rule 11.2(b). Furthermore, the Appellants' contention that the UNDT failed to address their argument that they had legitimately relied on the Tribunals' pronouncements in *Tintukasiri et al.* is misconstrued. As stated above, the Tribunals made no finding on whether or not that case should have been submitted for management evaluation. There was thus no judicial precedent which the UNDT would have had to address. Finally, the argument that the UNDT disregarded their submission regarding the presumption of validity of official acts is not articulated clearly and has not been made before the UNDT. As to the other submissions, the Appellants are merely rearguing their case without identifying any defects and without demonstrating on which grounds the impugned Judgment is erroneous.

26. The Secretary-General requests the Appeals Tribunal to affirm the UNDT Judgment and to dismiss the appeals.

Considerations

27. The appeals remain without success. The UNDT did not commit any errors of law or fact in finding that the applications were irreceivable *ratione materiae*. We agree with this finding.

28. Like the UNDT, the Appeals Tribunal will not examine whether the decision challenged by the Appellants is an administrative decision under Article 2(1)(a) of the UNDT Statute. If the Secretary-General's contention is correct and the appealed decision is not an administrative decision, the applications are irreceivable *ratione materiae* already for this reason.

29. However, assuming, in favor of the Appellants, that what they contest is indeed an administrative decision, their applications are also irreceivable *ratione materiae* because the Appellants did not request management evaluation. Staff Rule 11.2 provides

- (a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation

11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

(b) A staffmember wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, or of a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process is not required to request a management evaluation.

(c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

(d) The Secretary-General's response, reflecting the outcome of the

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31. In the present case, none of the exceptions applies. Particularly, the 1 October 2014 salary freeze and the following implementation were not a decision taken pursuant to the advice of a technical body, as determined by the Secretary-General. As the UNDT Judgment contains a correct, thorough and well-founded reasoning, we mainly refer to it and only add the following:

Whether the LSSC constitutes a technical body as determined by the Secretary-General under Staff Rule 11.2(b)?

32. The LSSC does not constitute a technical body as determined by the Secretary-General under Staff Rule 11.2(b). The 2012 MEU response cited and published in the Tintukasiri et al. Judgments cannot be regarded as a determination of technical bodies

by the Secretary-General under Staff Rule 11.2(b). Such a determination, intended not only for a specific situation or case but for general application, is not a technical body. en(1)-5e(d)-6u 2 (2 l(e 1)-l Tc 0 e8-0. (7 1)-ns)8b90 .0t43ce92.218 (u)byBf0c001 Tw -4 >>BDCP2 1 Tf -012001 T

body as determined by the Secretary-General, thus exempting the Appellants from the mandatory first step of requesting management evaluation.¹²

Whether the Appellants were exempted from filing a r72 0BT /TT2 1 Tf38.001 Tw 6.667 0 0 [(hu)4.2 (s)-2

the requirement of management evaluation is the prerogative of the Secretary-General, and the Tribunals have no authority in this respect.

Judgment

39. The appeals are dismissed and Judgment Nos. UNDT/2019/099, UNDT/2019/100, UNDT/2019/101, UNDT/2019/102, UNDT/2019/104, and UNDT/2019/121 are affirmed.

Annex 1

List of names of the Appellants in the s ix appeals

2019-1295 George Thomas; Manish Khetawat; Tarun Arora; Pallikaranai Seshadri;
George Poulos; Siddharth Mohanty; Mallesh Bazar; Piyush Choudhary;
Sheena George; Rashim Bhagotra; Monica Gupta; Raj 0.027 Tw27 Tw 0. Td [(lle8 (i 0 Tmc 0 Tw (c