Registry's translation, the French text alone being authoritative.

SEVENTIETH SESSION

In re de VILLEGAS (No. 14)

Judgment 1068

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourteenth complaint filed by Mrs. Maria Adriana de Villegas against the International Labour Organisation (ILO) on 12 August 1989 and corrected on 5 February 1990, the ILO's reply of 12 April, the complainant's rejoinder dated 30 August and the Organisation's surrejoinder of 2 November 1990;

Considering Articles II, paragraph 1, and VII, paragraphs 1 and 2, of the Statute of the Tribunal and Articles 11.6, 11.16 and 14.8 of the Staff Regulations of the International Labour Office;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, a Colombian citizen who was born in Romania in 1922, joined the staff of the International Labour Office in 1969. Judgment 404 sums up, under A to D, her career in several branches of the Office and how it came to an end. On 1 September 1972 she was granted an appointment of indeterminate duration, and her grade was P.3. The grading of all posts, including hers, was reviewed and in May 1975 she had the grading of her post confirmed at P.3. She appealed to the Professional Grading Appeals Committee, which in due course concluded that her post ought to have been graded P.4 as from 1 January 1975.

As the Tribunal stated in the same judgment, under 1, she and the ILO signed an agreement on 22 and 29 July 1977. The agreement stipulated, among other things, that she was to be promoted to P.4 as from 1 January 1975; her permanent appointment was to end on 20 August 1977; she was to be granted a fixed-term appointment from 21 August 1977 to 20 August 1978; failing renewal of that or any later appointment she was to be paid the indemnity provided for in Article 11.6 of the Staff Regulations ("Indemnity upon reduction of staff"); and the agreement constituted full and final settlement of all matters then pending between her and the Organisation.

The Director-General later extended her appointment for the last time to 30 September 1978, and an order of payment was made out in her favour for 44,418.91 United States dollars to cover: "Repatriation benefit; indemnity under Article 11.16 [sic]; accrued leave (60 days)". She signed the order but added: "I object to the reasons and the criteria; I accept the cheque in part-payment of my entitlements, which I reserve".

Her first complaint challenged the decision not to extend her appointment beyond 30 September 1978, but in Judgment 404 the Tribunal dismissed it, disallowing her objections to the validity of the agreement and to the non-renewal.

In a letter which she says was dated 20 December 1988 she asked the Director-General to settle once and for all the issues she regarded as outstanding: the grading of her post, the denial of her right to a hearing on several matters, her "brutal" termination and the meagreness of her pension.

On 8 February 1989 a staff representative wrote to the Chief of the Personnel Development Branch (P/DEV) asking what provision of the Staff Regulations her termination indemnity had come under and whether the Director-General had fulfilled an undertaking he had allegedly entered into in 1981 to pay her the equivalent of three months' pay. In a minute of 23 February the Chief of P/DEV answered that the reference in the order of payment to Article 11.16 ("Agreed termination") was wrong and that she had been paid the indemnity under 11.6; the matter of the three months' pay was "being investigated".

Having got no answer to her letter of 20 December 1988 she wrote on 18 April 1989 to the Director of the Director-General's Office claiming (1) payment for a three-month extension of appointment, (2) payment of a

larger indemnity under 11.16, (3) the fulfilment of promises which she alleged the Director-General had made her orally at a meeting in July 1981 and (4) the listing in the ILO Bibliography and the attribution to her of all publications of which she had been the author.

By a letter of 15 May 1989 the Director of the Personnel Department rejected her claims as time-barred and worthless and told her to stop her idle harassment of officials over her grievances.

On 26 May she wrote a letter to the Director-General in which she said that the letter of 15 May contained mis-statements and that she had been denied her right to a hearing, and asked for review.

Having got no reply she filed her complaint on 12 August 1989 impugning the letter of 15 May.

B. The complainant alleges that the small group of former and serving officials who have dealt with her case have throughout resorted to "extraordinary tactics" to foster "confusion and fear". She dwells on what she sees as constant mistreatment of her over the years. She goes over the circumstances in which she signed the agreement in 1977. She alleges duress on several occasions. She accuses the ILO of forcing her in 1986 to remove her household effects to Colombia so that she would be absent from Geneva when the Tribunal came to hear Miss Cachelin's case (Judgment 792). In her view the Organisation has all along shown scant respect for the truth and an irresponsible and dilatory attitude whereas she herself has shown good faith and forbearance.

At the meeting in July 1981 the Director-General offered to reinstate her if she left Geneva, and she accepted because she needed work for financial and professional reasons.

She asks the ILO to produce a written record of that meeting.

The Tribunal ordered the ILO to make an inquiry into its practice in granting the 11.16 indemnity - commonly known as the "golden handshake" - and in Judgment 792 held that it had been wrong not to pay the indemnity to Miss Cachelin. That is a new fact relevant to her own case. She asks the Tribunal to order the ILO to report on its practice from 1977 to 1981 and since 1986. In refusing her the indemnity the ILO has discriminated against her. She names officials who got it and asks the Organisation to say who else did. She can show that she was a more deserving case than those who were paid it, and who were reinstated to boot.

Her pension being just over $700 a month and not enough to live on in Geneva or elsewhere, the Organisation must find some way of giving her a full pension, not the miserly one she has because it drove her out before the age of retirement. She relies on Judgment 990 (in re Cuvillier No. 3).

She asks the Tribunal to quash the impugned decision of 15 May 1989; to order the ILO to pay her salary for October, November and December 1978 and the 11.16 indemnity, plus interest as from the date of her termination, 30 September 1978; to order the ILO to provide a decent pension for her by means of "retroactive contributions" to the United Nations Joint Staff Pension Fund; to grant her at least one year's pay, or 100,000 Swiss francs, in damages for moral and professional injury; and to award her costs.

C. In its reply the ILO submits that the complaint is contrived and vexatious since the "decision" of 15 May 1989 it purports to impugn was mere confirmation of a state of affairs the complainant had long known about.

Her claim to another three months' pay is irreceivable and in any event misconceived. In a letter of 23 October 1981 the Director of the Director-General's Office did tell her that the Director-General was willing, not to grant her a three-month appointment, but to pay her further financial compensation equivalent to three months' pay. But payment was to be made ex gratia: she had left the staff years earlier and the Organisation owed her no further duty under the Staff Regulations. Even if she had a claim under the Regulations the deadline under Article 14.8 was 23 October 1982. Since the ILO does not keep records of payments stretching as far back as that it cannot even be sure that it has not already paid her what she claims.

Her claim to the 11.16 indemnity is barred under the res judicata rule: Judgment 404 upheld the agreement of 1977, which granted her an indemnity under 11.6 and other benefits. She was paid her entitlements in full by 24 January 1979. The claim is irreceivable also under 14.8 and Article VII(2) of the Tribunal's Statute.

She is mistaken in alleging a new fact in Miss Cachelin's case: the Tribunal has already rejected a narrower notion of a new fact in Judgment 1005 (in re Semanaz). Besides, the agreement provided for her termination under 11.6,

not 11.16.

Lastly, her claim to review of her pension is outside the Tribunal's competence since it is the United Nations Joint Staff Pension Fund that sets the amount. Even if her claim came under the Staff Regulations it would be time-barred under 14.8 since she got notice on 19 July 1979 of the amount of her pension. She may not rely on Judgment 990 because of the res inter alios judicata rule.

D. In her rejoinder the complainant presses her three main claims, enlarges on her pleas and seeks at length to refute the Organisation's. She contends that the ILO may not plead the irreceivability of her claims since it has constantly resorted to trickery and to cruel and dilatory tactics. She dwells on her accusations of breach of good faith, equal treatment and acquired rights and again goes over the history of her disputes. She accuses the ILO of abuse of authority in that it has acted from a vengeful desire to reduce her to poverty.

Its brief is riddled with mistakes and misrepresentations, which she sets out in detail. She is at a disadvantage in pleading her case because she does not have access to the full records. If indeed the ILO has not kept her records she wants to know when it destroyed the relevant ones. She invites the Tribunal to order the production of the evidence required and to allow disclosure of the text of a letter she wrote to its President on 22 June 1989.

She is not claiming reinstatement, being past the age of retirement. The decision of 15 May 1989 was not mere confirmation of earlier ones. The ILO is bound to fulfil the repeated promises to pay her three months' salary. She has never been paid that amount: payment was not to be ex gratia but was an obligation assumed by virtue of a promise. She was not paid the 11.16 indemnity but merely the lower sum due under 11.6. She describes the severe moral and material injury the ILO has caused her. She submits that she pursued all her claims promptly and diligently. As to her pension, which she finds wretched, she explains that her quarrel is not with the Fund, but with the ILO, and that because of the breach of her acquired rights, the Staff Regulations and general principles of law the Tribunal does have competence. It omitted in earlier judgments to rule on her claims to pension rights.

E. In its surrejoinder the Organisation again invites the Tribunal to reject the complainant's claims as irreceivable and in any event as devoid of merit. It submits that in breach of the res judicata rule she is again raising matters the Tribunal has already ruled on, in particular the validity of the agreement she signed with the ILO and the matter of her pension entitlements. The Tribunal is not competent to entertain her application for review of the amount of her pension, and the application is time-barred anyway. So is her claim to award of the 11.16 indemnity. Her claim to grant of the equivalent of three months' pay is unfounded because the Director-General's promise was made ex gratia; besides, it too is out of time.

CONSIDERATIONS:

1. The complainant's fourteenth complaint impugns a decision by the Director of the Personnel Department to reject a claim she made in a letter of 18 April 1989 to the Director of the Director-General's Office.

In her letter she asked for an immediate answer to a letter she had written the Director-General and dated, according to her, 20 December 1988 with particular reference to two issues. One issue was an offer of three months' extension of appointment and the other the grant of a termination indemnity under Article 11.16 of the Staff Regulations. Two further issues she mentioned were promises the Director-General had made her in July 1981 and revision of the ILO Bibliography.

She invites the Tribunal to order the ILO to pay her three months' salary for October, November and December 1978 and the 11.16 indemnity. She wants an invitation to endorse a proposal of arrangements with the United Nations Joint Staff Pension Fund that would consist in the payment of "retroactive contributions", relieve her of the adverse consequences of early retirement and give her a decent pension. She seeks awards of damages for moral and professional injury and of costs.

2. Since the statement of her claims in her complaint omits the one about revision of the ILO Bibliography she may be deemed to have waived it. As for her claim to a bigger pension, she did not mention it in her letter of 18 April 1989: the matter is dealt with below.

The claim to three months' salary

3. The complainant is relying on an offer which the Director-General made her when they met in July 1981:

according to a confirmatory letter of 23 October 1981 he would grant her the equivalent of her pay for a three-month extension of appointment, an offer that had already been contemplated in 1978 but made subject to two conditions that had not been met at that time.

The ILO's answer is that all it offered her was an ex

gratia payment under the Financial Regulations: she had left two years earlier and it owed her no obligation under the Staff Regulations.

That plea is unsound because the offer was the corollary of arrangements made in 1978 - before she had left - and because it came from the Director-General, who thereby committed the Organisation.

More telling is its objection that the expiry of the time limit in Article 14.8 of the Staff Regulations bars the claim. What 14.8 says is that, save where the Regulations otherwise provide, no claim under them shall be entertained if submitted over twelve months from the date at which the right to make it accrued. In the ILO's submission the twelve months began on 23 October 1981, when the Director-General made his offer, and so ran out on 23 October 1982. So not even the complainant's letter of 20 December 1988 was anywhere near being in time, let alone the one of 18 April 1989.

The complainant does not really take the point but merely alleges that she was never paid the sum and, although the Organisation does not refute that, she offers no proof either.

That the ILO failed to pay her the sum she claims is irrelevant to the time bar. She was free to file a claim on account of its failure to abide by the Director-General's promise and since she did not do so within twelve months of 23 October 1981 her letter of 20 December 1988 was out of time.

The ILO's objection to the receivability of her claim is sustained.

The claim to payment of the 11.16 indemnity

4. The complainant contends that she met all the conditions set in Article 11.16 of the Staff Regulations for grant of the termination indemnity: her appointment was terminated by the Director-General, it was contrary to her own legitimate and essential interests, and she signed the agreement under duress and subject to the safeguarding of her acquired rights under the Staff Regulations, to repeated objections and to conditions that the Organisation never respected. It acknowledged her right to the indemnity by listing it in a statement of payments made to her on 24 January 1979. Yet the amount she got was not the indemnity and a statement of account that was appended was not in the same terms as the receipt that actually bears her signature.

In answer the Organisation does not deny mention of the 11.16 indemnity in the agreement which the parties signed on 22 and 29 July 1977 and which the Tribunal recognised as valid in Judgment 404 of 24 April 1980. But it maintains that she has had her entitlements in full and that she received final payment on 24 January 1979. Her claim to the indemnity is time-barred under Article 14.8 and is besides irreceivable under the res judicata rule.

The Tribunal accepts that plea.

The claim to a bigger pension

5. She asks the Tribunal to note that she did not consent to early retirement and that it is the ILO's fault she has to live on short commons.

As was said above, her claim under this head did not appear in her letter of 18 April 1989. She may not put to the Tribunal a claim that did not form part of those she set out in that letter.

6. Her claim about her pension being irreceivable, there is no need to rule on the merits.

7. Since her main claims fail, so too, and for the same reasons, does her incidental one to damages for the moral and professional injury which the ILO's harassment, victimisation and negligence allegedly caused her.

8. Her application for the disclosure of evidence is disallowed because it is relevant only to the merits.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Tun Mohamed Suffian, Vice- President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Edilbert Razafindralambo, Deputy Judge, have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 29 January 1991.

(Signed)

Mohamed Suffian
Mella Carroll
E. Razafindralambo
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.