

## SEVENTY-FIFTH SESSION

### *In re* QURAISHI

#### Judgment 1267

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Muhammad Mahmud Quraishi against the International Labour Organisation (ILO) on 16 August 1992, the ILO's reply of 28 October, the complainant's rejoinder of 14 December 1992 and the Organisation's surrejoinder of 16 February 1993;

Considering Article II, paragraph 4, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. The complainant, a citizen of Pakistan, first served the ILO from November 1982 to March 1984 under a series of contracts for "external collaboration" in "in-plant" vocational training in Pakistan.

From 1 April 1984 to 31 December 1985 the Organisation employed him under a service agreement dated 22 February 1984 as a specialist, again in in-plant training, on a national training project in Pakistan. The agreement stipulated that the Staff Regulations of the ILO would not apply, his rights and duties being "strictly limited to the terms and conditions of [the] Agreement". It stated that the "title rights, copyrights and all other rights of whatsoever nature in any material produced under the provisions of this Agreement shall be vested exclusively in the ILO". It provided for referral to the Tribunal of any disputes "relating to the interpretation or execution of the ... Agreement which cannot be settled amicably".

From January 1986 the complainant worked as a private consultant. From August to December 1986 the ILO took him back for work on a project in the South Pacific. From 30 April to 24 May 1990 he worked for it under another contract for external collaboration in Pakistan, where his duties included preparation of a project to be funded by the United Nations Development Programme (UNDP) for setting up a national centre for training supervisors.

On 7 June 1991 the ILO advertised in the press in Pakistan a vacancy for a "national supervisory training adviser" under the project. By a memorandum of 14 July the chief technical adviser (CTA) of the project informed the complainant that the UNDP was imposing a "complicated" process of selection and cuts of some 100,000 United States dollars in the budget of the project.

There were 51 applicants for the post, including the complainant. In a letter of 18 July 1991 to the UNDP's resident representative at Islamabad the director of the ILO's office for Pakistan, also at Islamabad, said that the CTA and his Government counterpart - the general manager of the Pakistan Industrial Technical Assistance Centre (PITAC) - named the complainant as their first choice, and the director recommended setting the salary at \$2,500 a month "as originally provided in the project budget". Replying on 25 July 1991, the UNDP's assistant resident representative outlined the process of selection, whereby all applications were to go to a selection committee made up of representatives of the Government, the ILO and the UNDP.

On 31 July the CTA sent the ILO's office at Islamabad a memorandum about a meeting he had had on 29 July with the complainant and with the Government counterpart, who was keen to see an early appointment made.

By a letter of 29 August 1991 to the director of the ILO's office the complainant asked for appointment to the post in keeping with "a clear agreement" with a former director. He said that the whole idea of a "National Supervisory Training Centre", which went back to 1984, was his own and that he had been developing and promoting it ever since. By a letter of 12 September the director answered that his name was on the shortlist of candidates put to the UNDP for consideration by the selection committee. He added that the UNDP had "revised" the salary downwards to \$1,500 a month.

On 16 October 1991 the complainant wrote to the Director-General of the International Labour Office claiming

\$210,000 as a reward for the idea and \$75,000 in damages for "breach of contract". After an exchange of correspondence the Chief of the Technical Co-operation Personnel Branch of the Department of Technical Co-operation rejected his claims in a letter of 19 May 1992 on the grounds that the ILO had neither undertaken to pay him for the idea nor promised him any particular post. That is the decision he impugns.

B. The complainant claims compensation for services rendered and relies on a promise of the post of national supervisory training adviser under the project. It was he who had the idea and developed and promoted it. Since that was not part of his duties as a specialist in in-plant training and did not fall within the purview of any of his work contracts he is entitled to separate remuneration for it. He recounts his many efforts to get the project going and objects to the ILO's deriving financial and other benefit from them yet denying him "adequate compensation".

The ILO had a duty under a "binding contract" to appoint him to the advertised post for 30 months at a monthly salary of \$2,500. Some ILO officials having assured him that he would get it, he could only assume, as he had on earlier occasions, that making out a written contract was "a mere formality".

He points out that the advertisement of the post in the press mentioned neither selection committee nor salary. Since the employer was the ILO, not the UNDP, the process of selection was for the ILO to determine; and the project document, which Government, UNDP and ILO approved, provided for a salary of \$2,500 a month for 30 months. Instead of honouring its commitment the Organisation brought in a selection committee so as to deny him his "rightful job".

He seeks awards of \$210,000 in compensation for his work and expense on the project from March 1984 to May 1991 and of \$75,000 in damages for breach of contract, both amounts to bear interest at 18 per cent a year as from 1 June 1991. He claims \$14,250 in costs.

C. In its reply the ILO submits that the Tribunal is not competent to hear his claims, which in any event are irreceivable and devoid of merit.

As to competence it observes that the interpretation and execution of his service agreement or contracts for external collaboration are not at issue. He rests his first claim - to compensation for the idea of a "National Supervisory Training Centre" - not on work under his service agreement, but on what he did in his own time, whether or not he was in the Organisation's employ. There being no dispute over interpretation or execution of the agreement - or other contracts - the Tribunal is not competent under Article II(4) of its Statute to entertain the claim.

Even if the terms of the agreement were deemed wide enough to cover work on the idea, his claim would be irreceivable anyway. Seven years went by before the complainant first made it, and such a long silence implies acquiescence. In any event a claim must be timely and made generally not more than one year, not several years, after the alleged right has accrued.

His second claim - to damages for breach of contract - also raises the question of competence. Insofar as the Organisation never drew up or offered, let alone agreed to, a contract for the post there can be no claim under any contract to which it "is a party" within the meaning of II(4).

It further argues that his first claim is devoid of merit because the contracts he held vested in it "title rights, copyrights and all other rights of whatsoever nature in any material produced under the provisions of [the] Agreement". Since he has neither applied for a patent nor obtained any other recognised protection for the idea, there is no basis in law for treating it as his exclusive property.

In answer to his plea of breach of contract the ILO observes that he offers not a jot of evidence of the existence of any contract: his second claim rests entirely on alleged and uncorroborated spoken promises from ILO officials. Though short contracts for external collaboration are sometimes made out after the work has actually begun, contracts of appointment to advertised posts are not. Besides, the complainant was never asked to start work without a contract.

D. In his rejoinder the complainant takes issue with several assertions of fact in the reply and seeks to explain the basis of his claims. The ILO is mistaken in saying that he waited seven years before making a claim: inasmuch as an ILO headquarters official had assured him that he would be paid once the project started he could not act sooner. Since the project did not start until June 1991 his claim of 16 October 1991 was well within the one-year time limit the ILO insists on. The "definite oral contract" on which his second claim rests was confirmed in the

CTA's memorandum of 31 July 1991 about the meeting with him on 29 July.

E. In its surrejoinder the ILO enlarges on its earlier pleas, observing that the rejoinder dwells on lesser issues of fact and fails to address the questions of competence and the merits.

#### CONSIDERATIONS:

1. The complainant, a citizen of Pakistan, worked for the ILO on a national vocational training project in Pakistan under a series of contracts for external collaboration from 1 November 1982 to 31 March 1984. He worked again as a specialist in in-plant training in Pakistan under a service agreement from 1 April 1984 to 31 December 1985.

2. In March 1984 he put forward the idea of a national supervisory training centre in discussions with the general manager of the Pakistan Industrial Technical Assistance Centre (PITAC), the aim of the proposed training centre being to raise productivity by making good the lack of shop-floor supervisors and foremen. He further discussed and developed the idea in the course of his service agreement although it was outside the scope of the national vocational training project and his prescribed duties. Upon the expiry of the agreement he put no claim to the Organisation for the idea or the work involved in developing it.

3. Early in 1986 he took up the idea again with PITAC and the Organisation. From the outset it was accepted that the Government of Pakistan and the United Nations Development Programme (UNDP) would have to contribute work and funds to the proposed project and that the complainant's services would be needed in drawing up documents prescribing their contributions. On 30 April 1990 he was appointed as a national consultant under a contract for external collaboration. He and the chief technical adviser (CTA) were to complete the documents by 24 May 1990.

4. The complainant submits that in May 1990, in the course of a discussion at which the CTA was also present, the then director of the ILO's office at Islamabad offered him an appointment as national supervisory training adviser at a monthly salary of 2,500 United States dollars for 30 months and that he accepted the offer. There is a reference to that meeting in a letter which the director wrote on 22 May 1990 to the deputy resident representative of the UNDP.

5. At the UNDP's request the complainant made some changes in July 1990 in the project document, which was then submitted to the Government of Pakistan for approval. The Government, the UNDP and the Organisation signed it in the ensuing months.

6. The complainant says that in May 1991 he was informed that the UNDP had reduced the budgeted and agreed salary of the national adviser to \$1,500 a month and that recruitment was to be by advertisement in the press. A new director of the ILO's office at Islamabad informed the resident representative of the UNDP by a letter of 18 July 1991 that only the complainant already met all the requirements of the post and that he should be paid \$2,500 a month "as originally provided in the project budget". In a letter of 29 August 1991 the complainant alleged breach of contract by the Organisation and demanded the grant of an appointment for 30 months at \$2,500 a month. The upshot was that the post was not filled, and so that the project might go ahead it was decided to assign the duties of the national adviser to several national consultants on short-term contracts.

7. The complainant has two main claims:

(1) to compensation, in an amount of \$210,000 plus interest, "for the concept, development, sales of idea, subsequent follow-up and out-of-pocket expense ... from March 1984 to May 1991 rendered to the ILO with regards to National Supervisory Training Centre ..."; and

(2) to compensation, in an amount of \$75,000 plus interest, "for the breach of contract on the part of ILO to employ the complainant to the post of National Supervisory Training Advisor in the National Supervisory Training Centre" for 30 months at \$2,500 a month.

8. The Organisation resists both claims on the grounds that are summed up in C above.

9. The complainant's first claim did not arise under the contracts which he held from 1 November 1982 to 31 December 1985 and which related to a different project with different objectives. Between 1 January 1986 and 29 April 1990 he had no contract at all with the Organisation so that any work he then did to develop his idea cannot

have been done under contract. And the work which he did between 30 April and 24 May 1990 was covered by, and fully paid for under, a contract for external collaboration. Since the claim does not arise out of a dispute over any contract to which the Organisation was a party the Tribunal is not competent to entertain it.

10. The complainant's second claim raises the question whether in May 1990 a contract was concluded between him and the Organisation. He says that the matter arose in the course of discussion about the project budget.

The first point is that that discussion must have taken place before the director wrote his letter of 22 May 1990, referred to in 4 above, forwarding to the deputy resident representative the project document to be processed for approval by the Government of Pakistan and the UNDP. The director is most unlikely to have made the complainant a firm offer of employment before the project and its budget had been approved. Indeed on 29 November 1990 the complainant himself sent the CTA a telefax message to say that the general manager of PITAC had written to the Organisation merely "recommending" his own recruitment.

Secondly, according to the CTA's memorandum of 31 July to the ILO at Islamabad, the CTA and the general manager of PITAC saw the complainant on 29 July, after the post had been advertised in the press, to discuss an enquiry from him about his "candidature" for the post. Again, that is inconsistent with the hypothesis that a contract had already been concluded with him.

Thirdly, the complainant's letter of 29 August 1991 to the director of the ILO's office at Islamabad refers to a meeting he attended in May 1990 with the then director, the CTA and the ILO programme officer at which they discussed the salary to be set for the post of national adviser. That too fails to square with the existence of a contract.

11. The conclusion is that, though support for the complainant's candidature for the post of national adviser may well have been expressed on several occasions, there was neither a contract concluded with him nor even a definite offer of employment made to him for the purpose. His second claim too therefore fails because the Tribunal is not competent to entertain it.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. José Maria Ruda, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 31 January 1994.

(Signed)

José Maria Ruda  
Mella Carroll  
Mark Fernando  
A.B. Gardner