



Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

HASSANIN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:
Lennox S. Hinds

Counsel for Respondent:
ALS/OHRM, UN Secretariat

Introduction

1. On 14 April 2014, the Applicant, a permanent staff member in the Publishing Section of the Department for General Assembly and Conference Management (“DGACM”), filed an application for suspension of action pending management evaluation of the decision to terminate his permanent appointment with the United Nations.

Background

2. On 6 January 2014, the Applicant received notice, by letter dated 31 December 2013, that he would be separated from service within three months, following the General Assembly approval, late December 2013, of the Secretary-General’s proposed abolition of 59 posts in the Publishing Section in DGACM. On 31 January 2014, the Applicant requested management evaluation of the decision to terminate his appointment.

3. During a meeting held on 19 February 2014, the Applicant was informed of the postponement of his termination date to 20 April 2014. This decision was confirmed via email from the Executive Officer, DGACM, on 24 February 2014. On 28 February 2014, the Management Evaluation Unit (“MEU”) advised the Applicant that the extension of his appointment until 20 April 2014 “superseded the contested administrative decision” and “effectively rendered [his] request for management evaluation moot”.

4. On 24 March 2014, the Applicant filed an application on the merits before the Tribunal (Case No. UNDT/NY/2014/020) challenging the decision to abolish his post and to terminate his permanent appointment with the United Nations by the date of 20 April 2014. The Applicant contended that MEU was in error in focussing on

the change of the termination date when they decided that his request for management evaluation “was rendered moot”.

5. On 24 March 2014, the Applicant also filed a motion for expedited hearing in Case No. UNDT/NY/2014/020, on the grounds that he would suffer irreparable harm if his case was not favorably disposed of on the merits by 17 April 2014, his last day at work since the 20 April 2014 was a Sunday. By Order No. 63 (NY/2014) rendered by Judge Greceanu on 10 April 2014, the Tribunal rejected the Applicant’s motion for an expedited hearing.

6. On 9 April 2014, the Applicant submitted another request for management evaluation, challenging the decision to terminate his appointment with effect from 20 April 2014, together with a request for suspension of the decision.

7. On 11 April 2014, the MEU dismissed the request for suspension of action on the grounds that the requirement for urgency was not met.

8. On 14 April 2014, the Applicant filed an application before this Tribunal for suspension of action pending management evaluation of the decision to terminate his appointment on 20 April 2014. The Applicant argues that the decision to terminate his permanent appointment is unlawful because it was not reached in accordance with the requirement of due process and the decision is tainted by improper motive in that it is a prejudicial action based upon his status as First President of the United Nations Staff Union (“UNSU”) and prior activities as staff representative. The Applicant also contends that if the contested decision is not suspended, termination of his appointment will take place on 17 April 2014. With respect to the requirement of irreparable harm, the Applicant contends that “upon implementation of the administrative decision, [the] Applicant would be deprived of his fundamental right of freedom of association which constitutes irreparable harm”.

Consideration

9. Article 2.2 of the Statute of the Dispute Tribunal states that:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

10. An application under art. 2.2 of the Statute is predicated upon an ongoing and pending management evaluation of an administrative decision that may properly be suspended by the Tribunal. The Applicant seeks the suspension of the decision to terminate his permanent appointment, initially scheduled for 31 March 2014, and now due to effectively take place on 20 April 2014. The Applicant indicates that he received the contested decision on 24 February 2014, which is in fact the date of the communication of an email from the Executive Officer of DGACM confirming a decision communicated to him on 19 February 2014 to postpone the termination of the appointment for 20 April 2014. The original contested decision to terminate his appointment, communicated to him on 6 January 2014, remained.

11. The Tribunal observes that in its determination of the request for management evaluation of the decision to terminate the Applicant's appointment submitted on 31 January 2014, MEU considered the Applicant's request moot on the grounds that the administration extended the appointment until 20 April 2014. This appears to the Tribunal to be inexplicable. The Administration merely postponed the termination date of the Applicant's appointment; it did not rescind it. The Applicant was therefore entitled to receive a response on the merits of his request for management evaluation.

12. The Tribunal also observes that the Applicant's application for suspension of action pending management evaluation is misguided. The Applicant makes this application following the decision from the Tribunal in Case No. UNDT/NY/2014/020 to reject his motion for expedited hearing in respect of the decision to terminate his appointment on 20 April 2014. The decision to terminate the Applicant's appointment on 20 April 2014 is currently before the Tribunal to be considered in due course.

13. The present application for suspension of action pending management evaluation appears to be a rather inelegant attempt at circumventing the provisions of art. 10.2 of the Tribunal's Statute and art. 14.1 of the Tribunal's Rules of Procedure according to which suspensions of action during proceedings is not receivable in cases of termination of appointment.

14. Since there is no new contested decision on the basis of which the Applicant is raising a new cause of action which is properly before the MEU, the Tribunal finds that the application is not a valid request for suspension of action pending management evaluation under the Statute and the Rules of Procedure.

15. The Tribunal further notes that while the matter raised by the Applicant is indeed urgent due to the impending termination of the Applicant's appointment on 20 April 2014, the present application is made less than four days before the effective date of separation on 17 April 2014 whilst the Applicant was put on notice of the termination of his contract for at least three months. This is a case of self created urgency.

Conclusion

16. The Tribunal finds that the request for suspension of action fails because there does not appear to be a management evaluation pending within the meaning of art. 2.2 of the Statute or art. 13 of the Rules of Procedure. Even if the Applicant were

to take the view that the MEU communicated a decision on only part of his request, the Tribunal finds that whilst there is urgency behind the request it was self-created. Finally, this being a case of termination of employment the Applicant cannot rely upon art. 10.2 of the Statute and art. 14 of the Rules of Procedure.

17. The Tribunal is concerned at the manner in which these proceedings have been conducted by and on behalf of the Applicant. The request for a suspension of action, given the circumstances of the case, is arguably vexatious and in any event is wholly unreasonable. The Tribunal was minded to consider whether costs should be ordered under art. 10.6 of the Statute for abuse of process. However, it would appear that this is not a case of manifest abuse of proceedings but an act of desperation on the part of a staff member, with long service in the Organization, anxious about the prospect of loss of employment. In the circumstances, the Tribunal does not make an order for costs but trusts that it would serve as a salutary reminder to staff and their legal representatives that, in an appropriate case, conduct of this kind will incur the risk of an order for costs.

18. ORDER

19. The request for suspension of action is refused.

(Signed)

Judge Goolam Meeran

Dated this 15th day of April 2014