



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

AKHTAB

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Bart Willemsen, UNICEF

Introduction

1. On 25 March 2014, the Applicant, Program Officer in the United Nations Children’s Fund (“UNICEF”) in Bangladesh, filed an application for suspension of action by which the Applicant requested the Tribunal to order suspension of the implementation of the decision not to extend her appointment beyond its expiration date of 31 March 2014.

2. The Registry transmitted the present application to the Respondent on 25 March 2014. The Respondent duly filed his reply on 26 March 2014 and informed the Tribunal that prior to receiving the application for suspension of action, the Respondent had informed the Applicant that

as a result of the intimate connection between her performance evaluation report for the period 1 January 2013 – 31 December 2013 and the decision not to extend her appointment, the implementation of the latter would be suspended until the completion of the process of management evaluation of that same decision, which in turn would be suspended until the rebuttal process in relation to the aforementioned performance evaluation report would be completed.

3. The Respondent therefore submits that the application is “moot and stands to be dismissed in the absence of an act of withdrawal”.

Background

4. The following factual chronology is based on the parties’ submissions to the Tribunal and the written documentation before it.

5. The Applicant joined UNICEF in August 2012 on a fixed-term contract until 31 December 2013 as a Program Officer in one of the decentralized UNICEF field/zone office in Bangladesh, headed by a Head of Zone Officer (“HoZO”). On

20 August 2013, the Chief of Human Resources in the UNICEF office in Dhaka requested, through memorandum copied to the concerned staff members, that the HoZO submits her recommendation as to whether their fixed-term appointments, including the Applicant's, should be extended beyond 31 December 2013.

6. On 19 September 2013, the HoZO sent an email to the Applicant referring to the performance related discussions in prior meetings during which specific suggestions were said to have been made to improve the Applicant's unsatisfactory performances in various areas, including competencies, communication and teamwork. On 29 September 2013, referring to a discussion held the same day, the Applicant requested via email that the HoZO provides examples that had led her to reach such conclusions.

7. By memorandum dated 6 October 2013, copied to the Applicant, the HoZO recommended that the Applicant's contract shall not be extended beyond 31 December 2013. The HoZO referred to the unsatisfactory performance of the Applicant as well as various behavioral issues. Referring to efforts made in order to improve her performance, the HoZO indicated that "[d]espite all of these efforts, it has been found that the [Applicant] is continuously remaining as under-performer". The HoZO further indicated that the Applicant "has been damaging the office environment and relationships with the counterparts".

8. On 18 November 2013, the Applicant addressed, via email, a complaint of harassment, discrimination and abuse of authority against the HoZO to a number of individuals, including the Chief Field Operations of UNICEF in Bangladesh. The Applicant referred to the email of 19 September 2013 from the HoZO as well as to the letter of 6 October 2013. She further indicated that it had been two months since the HoZO had been requested to provide instances of under-performance or behavioral problems that had led to her comments and the Applicant had received no response.

9. In December 2013, the Applicant's contract was extended for three months, until 31 March 2014.

10. The Applicant met with the Chief Field Operations on 4 February 2014 and was informed on 6 February 2014 via email that the "Office is having a detailed review on the various points [the Applicant] mentioned in [her] email dated 18 [November] 2013 and appropriate actions will be taken in due course". The Applicant responded by email on 12 February 2014.

11. On 13 February 2014, the Applicant provided to the HoZO, via email, her comments on her performance appraisal and informed her that "[a]s the comments that [the HoZO] have made throughout documents came to [her] as surprises and no discussion on these took place both in mid-year and end-year period, and the comments are very objectionable and defamatory, [the Applicant] still look forward to the detail[ed] facts and evidence that led [the HoZO] to these appraisals". The Applicant additionally indicated that she had signed her performance appraisal in order to respect administrative procedures.

12. On 19 February 2014, the Applicant was notified by Human Resources that her contract will not be renewed beyond 31 March 2014. On 24 February 2014, the Applicant further requested various staff members within UNICEF to consider her situation. By memorandum dated 27 February 2014, the Chief of Human Resources in Dakha informed the Applicant of the separation procedure upon expiration of her fixed-term appointment by close of business on 31 March 2014. The HoZO and the Chief of Field Operations received copies of this communication.

13. On 3 and 7 March 2014, the Applicant reiterated, via email, her request for assistance regarding her complaint for harassment, discrimination and abuse of procedure. She further indicated in her application for suspension of action that she had "lodged a complaint of harassment against the HoZO with the Office of

Investigations at Headquarters, an application for management evaluation with the UNICEF Deputy Executive Director and a rebuttal of [her performance appraisal] for the year 2013 with the regional [Human Resources] Chief”.

14. The Applicant requested management evaluation of the decision not to extend her appointment beyond expiration on 31 March 2014 on 7 March 2014. By letter dated 10 March 2014, the Chief of Policy and Administrative Law Section, Division of Human Resources, UNICEF, acknowledged receipt of the above mentioned Applicant’s email and indicated that a response to the management evaluation request by UNICEF shall be provided on or before 21 April 2014.

15. On 26 February 2014, the Respondent informed the Applicant that in view of the rebuttal process and the management evaluation request, which are closely inter-related, the decision not to extend her appointment will be suspended until completion of, firstly, the rebuttal process in relation to the performance evaluation and, secondly, the process of management evaluation of that same decision. The Applicant acknowledged receipt of this communication on 27 February 2014 and informed the Respondent that she has decided to accept the offer of a two-month extension of her contract.

Consideration

16. The Tribunal notes that the Applicant has confirmed, via email dated 27 March 2014, that she accepted the Respondent’s offer to extend her contract for two months. The Applicant further acknowledged receipt of the Respondent’s letter whereby she was informed that the decision not to extend her appointment will be suspended until completion of both the rebuttal process in relation to the performance evaluation report and management evaluation of the decision to not extend the fixed-term appointment of the Applicant. It results that the contested decision was suspended after the filing of the present application.

17. Consequently, the implementation of the contested decision being already suspended pending the management evaluation, the Tribunal considers that the application remained without object.

Conclusion

18. In view of the foregoing, the Tribunal hereby orders that the application for suspension of action be rejected.

(Signed)

Judge Alessandra Greceanu

Dated this 28th day of March 2014