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TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2009-001

Muthuswami et al.

(Appellants)

JUDGE

6. In response to the notice that this appeal would be heard during the Appeals Tribunal’s first session in Geneva in March 2010, Muthuswami filed an open letter dated 16 February 2010 containing further arguments relating to the appeal.

7. On 4 March 2010, the Pension Board filed a statement by its Consultancy Actuary, John McGrath, providing background information on technical actuarial aspects of the proposal to change the level of pension benefits. On 10 March 2010, Muthuswami submitted comments on the statement.

8. The hearing of the appeal was postponed until the second session of the Appeals Tribunal in New York. At a public hearing held on 22 June 2010, the Appeals Trib-6(alhC 9.CcCe)-1(9.Cc39.C

12. While most of the UNJSPF Regulations have been amended over the years, the lump sum provision has remained constant, despite vastly changed circumstances like life expectancy.

13. The continuation of the payment of a reduced pension benefit beyond the full recovery of the lump sum (with interest and charges) creates two classes of beneficiaries who are unequal - those beneficiaries who took the lump sum and those who did not. This amounts to discrimination and violates the articles of the Universal Declaration of Human Rights, 1948,[1] and the Charter of the United Nations in respect of equity, fairness, and justice. This also amounts to non-compliance with the Noblemaire principle, which is still in force and should continue to apply even in retirement.

14. In India, lump sum commutation and restoration of full pension after 15 years has long been the practice and was fully endorsed by India's highest court in 1986.

Pension Board's Answer

15. The Pension Board submits that, under the UNJSPF Regulations, it is clear that when a UNJSPF participant upon retirement elects to exercise the option to commute a portion of the pension entitlement into an actuarially calculated lump sum, the resultant reduction in pension will remain in effect for the lifetime of the retiree.

16. In a defined-benefit pension plan such as the UNJSPF plan, the employer promises the employee on retirement a periodic benefit that is predetermined or "defined" by a formula which considers the employee's earnings history, years of service, and age, rather than resulting from what the employee and employer contributed and the investment returns.

17. The Pension Board argues that the request of the Appellants, if allowed, would require a fundamental change in the level of contributions from participants and member organizations to fund the type of benefits sought by the Appellants.

18. The request of the Appellants would be unfair to those retirees who opted to take the full pension and no lump sum. If the lump sum was to be restored to those retirees who

[1] General Assembly resolution 217A (III).

opted for the lump sum, they would be getting an additional benefit – one that has no basis in the current UNJSPF Regulations.

Considerations

19. This is an appeal from a decision of the Standing Committee under Article 2(9) of the Statute of the Appeals Tribunal, which provides as follows:

> The Appeals Tribunal shall be competent to hear and pass judgement on an appeal of a decision of the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board, alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund, submitted by:
>
> (a) Any staff member of a member organization of the Pension Fund which has accepted the jurisdiction of the Appeals Tribunal in Pension Fund cases who is eligible under article 21 of the regulations of the Fund as a participant in the Fund, even if his or her employment has ceased, and any person who has acceded to such staff member's rights upon his or her death;...

20. Sundaram, Muthuswami, and Srinivasan are retirees who, at the time of their retirement, opted to commute one-third of their pension benefit entitlement into a lump sum, which entailed a consequential reduction in their pension benefits for life. In May 2009, Srinivasan wrote to the UNJSPF requesting "[r]estoration of full pension for 1/3 Lump Sum Recipients after a pre-determined period of commuta4(is 85 0iv)7(5(fu)8di(Ma)4(y (e)44(r

27. The Appellants state that their decision to receive one-third of the pension as a lump sum together with a reduced pension has not turned out to be the best choice, and they would be in a better position had they opted for a full pension. This may be true. However, this risk is inherent in the choice that is made by all retirees under the Regulations. If retirees are not bound by their decision, and can simply reverse the decision if it becomes apparent later that the choice they made was not to their advantage, this would fundamentally change the basis upon which the Pension Fund currently operates.

28. The Appellants make a general argument that in these circumstances they have been discriminated against and their basic fundamental rights concerning equity, fairness, and justice under the Universal Declaration of Human Rights, 1948 have been violated. Given the legal framework for the establishment and operation of the Pension Fund adopted by the General Assembly and the application of the Pension Fund's Regulations to the Appellants, a general argument of this nature cannot succeed.

29. The Appellants rely on the Noblemaire principle in support of their argument that the Regulations must be implemented to limit the period of commutation of the lump sum to a fixed duration, after which time the full pension is automatically restored. The Appellants argue that some national service pension schemes, including that of India, allow for restoration of the full pension in this way.

30. The Administrative Tribunal of the International Labour Organization (ILOAT), in Judgment 986, *In re Ayoub (No. 2), Von Knorring, Perret-Nguyen (No. 2) and Santarelli* (1989), explained the Noblemaire principle and its application to the pensions system, as follows:

> 7. That general principle was born in League of Nations days, in 1920, and taken over by the United Nations. Though it has never been set down as a written rule, no international organisation or official text has ever challenged it, and it is a custom

> As so defined Noblemaire covers both pay and pension. The relations of staff with an international organisation do not end when they leave its employ. The pension scheme forms part of the administrative arrangements they may look forward to and, like pay, pensions are governed by basic rules that are binding on the organisation. Foremost among them is Noblemaire, the purpose of which is not to bestow privilege on international civil servants but to draw some of the best people from every country into the service.

31. General Assembly resolution 44/198, adopted on 21 December 1989, reaffirmed that the Noblemaire principle should continue to serve as the basis of comparison between United Nations emoluments and those of the highest-paying civil service – currently the United States federal civil service – which, by its size and structure, lends itself to such comparison. By its resolution 59/268, adopte

Judgment

35. For the foregoing reasons, the appeal is dismissed. The decision of the Standing Committee recorded in the letter from the UNJSPF to Srinivasan, dated 20 July 2009, is affirmed.

Dated this 1st day of July 2010 in New York, United States.

Original: English

(*Signed*)