

6. Labor Law

1. Purpose of an Employment Contract for a Definite Period.

Decision by the Third Petty Bench of the Supreme Court on June 5, 1990. Case No. (o) 854 of 1989. 44 Minshū 668.

[Facts]

X (plaintiff, *koso* appellant, *jokoku* appellant) is a full-time lecturer of a high school managed by Y (defendant, *koso* respondent, *jokoku* respondent). On hiring X, Y explained to X that X was to be hired as a full-time lecturer, that the employment contract would be provisionally concluded for one year, and that Y would decide whether to rehire X or not after examining X's performance for the year. After X had worked for Y as a lecturer for one and a half months, he signed a contract to the effect that X was hired as a full-time lecturer for a year and that the contract would be terminated at the end of the period without any notice such as dismissal notice.

Y ceased to treat X as a lecturer at the end of the contract period. X filed an action against Y, demanding judicial affirmation of his position as a lecturer.

The courts of the first and second instances rejected X's demand, held that the contract was terminated because its period had expired.

[Opinions of the Court]

Original decision reversed and remanded.

If an employer enters into an employment contract of a definite period with a newly hired worker in order to evaluate his or her quality, it is adequate to interpret the period not as an employment period itself but as a probationary period, unless there exist some special circumstances such as an agreement between the parties to the effect that the contract shall be terminated at the expiration of the period.

It is questionable whether X and Y had agreed that the contract should be terminated at the expiration of the period.

[Comment]

Employers often use employment contracts of a definite period with a view to evading dismissal regulations.

In this case, the employer, who did not want to further employ the worker for certain reasons, invoked the period attached to the employment contract to terminate the employment. The employer, however, used an employment contract of a definite period not to satisfy temporary needs but to examine the performance of the worker, explained this to the worker.

The Supreme Court attached great importance to this fact and decided that such a period should be interpreted as a probationary period in principle. According to the decision, an employment contract like this is to be terminated at the expiration of the period if the parties have agreed to that effect. However, the parties to the probationary contract would not intend to terminate the contract automatically at the expiration of the probationary period. This decision limited to some extent the possibility of using an employment contract of a definite period.

2. Discriminatory Promotion and Wages for Female Employees.

Decision by the 19th Civil Division of the Tokyo District Court on July 4, 1990. Cases Nos. (*wa*) 1866 of 1980 and (*wa*) 15293 of 1981. 41 Rōminshū 513.

[Facts]

X et al. (plaintiffs) are female workers employed by Y (defendant). Y had discriminated between A and B (trade unions), i.e. members of A are discriminated against in terms of personnel ranking. Y promoted all male members of A and other male employees to the same ranks as those of male members of B in order to eliminate the discrimination. Y, however, did not promote any female employees.

X et al. filed an action against Y, demanding (1) payment of the amount unpaid because of their discriminated ranks and (2) judicial affirmation of their promoted ranks.

[Opinions of the Court]

(1) Claim allowed on payment of the amount unpaid.

There is no reason why male employees on the one hand and female employees on the other should be promoted differently. The omission of Y to promote female employees constitutes a tort as it is inconsistent with public policy. Y is liable for the tort.

(2) Claim dismissed on judicial affirmation.

There are no grounds for treating X et al. as promoted without Y's decision because the promotion is within Y's discretion.

[Comment]

In this case, the discrimination against female employees was so clear that the employer could not insist that male employees and female employees were treated equally. And the discriminatory treatment was not justified by the fact that the employer promoted male employees in order to eliminate the discrimination between unions.

In general, an employer who discriminates against female workers tries to conceal the discrimination. For example, the employer insists that the poor performance of the female employee prevents her promotion. As regards such a case, the Japanese legislation does not appear to provide for sufficient remedies.

In this decision, the claim on the judicial affirmation of the promoted ranks was dismissed. This also proves the insufficiency of the remedies.

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