SPC Guiding Case No. 185: Yan Jialin v. Zhejiang Sheraton Resort Co., Ltd. (Equal Employment Rights Dispute)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on July 4, 2022.

Keywords

Civil / equal employment right / employment discrimination / regional discrimination

Holding

Where an employer, in recruiting personnel, treats a worker differently without justifiable grounds on the basis of factors such as regional origin or gender that bear no necessary connection to the "intrinsic requirements of the job," such conduct constitutes employment discrimination. Where the worker, alleging infringement of his or her right to equal employment, requests that the employer bear the corresponding legal liability, the people's court shall support the claim.

Basic Facts

In July 2019, Zhejiang Sheraton Resort Co., Ltd. ("Sheraton Company") published a batch of recruitment information to the public through the Zhaopin recruitment platform, including two positions: "Legal Affairs Specialist" and "Assistant to the Chairman." On July 3, 2019, Yan Jialin submitted her résumé for each of the two aforementioned positions through the Zhaopin mobile App. The résumé submitted by Yan Jialin contained basic personal information such as her name, gender, date of birth, place of household registration, and current city of residence. Among this information, her place of household registration was filled in as "Nanyang, Henan," and her current city of residence as "Xihu District, Hangzhou, Zhejiang." According to the notarial certificate issued by the Hangzhou Internet Notary Office, notary personnel logged into the Zhaopin App client using Yan Jialin's account and password, which showed that the "Assistant to the Chairman" position for which Yan Jialin had applied was viewed at 14:28 on July 4, 2019, and a conclusion of "position not suitable" was given at 14:28, with the "reason for unsuitability: Henan person"; the "Legal Affairs Specialist" position was viewed at 14:28 on the same day, and a conclusion of "position not suitable" was given at 14:29, with the "reason for unsuitability: Henan person." Yan Jialin incurred notarization expenses of RMB 1,000 in connection with the notarization matters involved in the case. Yan Jialin brought a lawsuit before the Hangzhou Internet Court, requesting an order that Sheraton Company apologize, pay compensation for emotional distress, and bear the litigation-related expenses.

Judgment

On November 26, 2019, the Hangzhou Internet Court rendered Civil Judgment (2019) Zhe 0192 Min Chu No. 6405: (1) Defendant Sheraton Company shall, within ten days from the effective date of the judgment, compensate Plaintiff Yan Jialin for emotional distress and reasonable rights-protection expenses totaling RMB 10,000. (2) Defendant Sheraton Company shall, within ten days from the effective date of the judgment, make an oral apology to Plaintiff Yan Jialin and publish an apology in the Legal Daily (the content of the apology statement must be reviewed and approved by the court); if it fails to perform within the prescribed period, the court shall publish the main content of the judgment in a state-level media outlet, with the resulting expenses borne by Defendant Sheraton Company. (3) The remaining litigation claims of Plaintiff Yan Jialin were dismissed. After the judgment was pronounced, both Yan Jialin and Sheraton Company appealed. On May 15, 2020, the Hangzhou Intermediate People's Court rendered Civil Judgment (2020) Zhe 01 Min Zhong No. 736: the appeal was dismissed and the original judgment affirmed.

Reasoning

The effective judgment of the court held: The right to equal employment is a fundamental right enjoyed by workers in accordance with the law, having both the attributes of a social right and the attributes of a private right under civil law. A worker's enjoyment of the right to equal employment is a manifestation of the independence of his or her personality and freedom of will. Infringement of the right to equal employment infringes, in the field of civil law, the core content of the general personality right — human dignity. An important aspect of human dignity is the requirement of equal treatment. Employment discrimination often gives rise to a serious sense of being insulted, causing harm to a person's mental and even physical health. Accordingly, a worker may bring a civil lawsuit before the people's court to seek civil tort relief when his or her right to equal employment has been infringed.

Yan Jialin twice submitted her résumé to Sheraton Company, and on both occasions was rejected by Sheraton Company on the ground that she was "unsuitable" as a "Henan person." It is evident that, in the recruitment process at issue concerning Yan Jialin, Sheraton Company used the geographical space of the subject's origin as a criterion to classify the population and, on the basis of this classification criterion, gave Yan Jialin treatment lower than that which should ordinarily have been given to others — that is, refusal to hire. It can be found that Sheraton Company engaged in differential treatment of Yan Jialin on account of the factor of regional origin, namely her being a "Henan person."

Article 3 of the Employment Promotion Law of the People's Republic of China, in expressly prescribing the four legally prohibited grounds of distinction — ethnicity, race, sex, and religious belief — ends with the word "etc.," indicating that this provision is an open-ended clause by way of non-exhaustive enumeration. In other words, in addition to recognizing the aforementioned four grounds as prohibited grounds constituting unreasonable differential treatment, the law also recognizes that there exist other unreasonable grounds of the same nature as the aforementioned grounds, which are likewise prohibited by law. An important criterion for determining what grounds fall within the "etc." of the aforementioned provision is whether the employer makes its selection based on "self-acquired factors" closely related to the "intrinsic requirements of the job," such as a worker's profession, educational background, work experience, work skills, and vocational qualifications, or whether it makes its selection based on "ascribed factors" bearing no necessary connection to the "intrinsic requirements of the job," such as a worker's sex, household registration, identity, regional origin, age, appearance, ethnicity, race, or religion. The latter constitutes unreasonable employment discrimination prohibited by law. A worker's "ascribed factors" refer to factors that a person possesses from birth and that are difficult for that person to choose or control. Law, as a mechanism of social evaluation and regulation, should not set unequal conditions for workers on the basis of factors that are difficult for a person to choose or control; on the contrary, it should eliminate the practical inequality that these factors bring to workers. Using "ascribed factors" that have no relevance whatsoever to the "intrinsic requirements of the job" as a criterion for differential treatment in employment fundamentally violates the general principles of fairness and justice and lacks justification.

In this case, Sheraton Company differentially treated Yan Jialin's job application on account of the factor of regional origin, and regional origin is an "ascribed factor" that Yan Jialin, and indeed anyone, is unable to autonomously choose or control and that is inherent from birth. In the absence of objective and effective evidence adduced by Sheraton Company proving that there exists a necessary internal connection between the regional-origin factor and the position for which Yan Jialin applied, or that there existed another lawful purpose, Sheraton Company's criterion of distinction lacked reasonableness and constituted a legally prohibited ground. Therefore, Sheraton Company's proposal, in the recruitment activity at issue, of a regional-origin ground bearing no necessary connection to the occupation as a basis for differential treatment of Yan Jialin constituted employment discrimination against Yan Jialin and harmed her right to equal access to employment opportunities and to equal treatment in employment; it was subjectively at fault and constituted infringement of Yan Jialin's right to equal employment, and it should, in accordance with the law, bear civil liability for making a public apology and compensating for emotional distress and reasonable

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rights-protection expenses.

Relevant Legal Provisions

Articles 3 and 26 of the Employment Promotion Law of the People's Republic of China.

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