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NEWS REPORT

Country: Denmark
Title: Supreme Court case on occupational pension schemes and age discrimination
Date: 18 November 2015
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Context

Issue at stake: Occupational pension scheme and possible age discrimination: pension contributions increasing with age
Ground of discrimination: Age

Source: The Supreme Court, 1/2015, judgment delivered on 12 November 2015

Field: Employment

Applicable law: Section 2 and 6a of the Act on Prohibition of Discrimination in the Labour Market etc.

Content

Case:

A woman – age 29 - was recruited by a company providing analytical and information services to businesses and consumers. Pursuant to her employment contract, she was included in a compulsory pension scheme where pension contributions from her employer would increase with her age. The woman's wage was composed by the agreed basic salary plus the employer's pension contribution consisting of 6% of her basic salary. She would contribute herself to the pension with 3% of her basic salary. If the woman had been between 35 and 44 years of age, the employer's contribution would have been 8% and her own contribution would have been 4%. Finally, if she had been over 45 years of age, the employer contribution would have been 10% and she would have contributed 5% herself.

The woman resigned less than a year after and claimed that the pension scheme constituted unlawful discrimination on the ground of age. The employer claimed that pension schemes were not covered by the prohibition of age discrimination in the Act on Prohibition of Discrimination in the Labour Market etc. The Western High Court requested a preliminary ruling from the Court of Justice of the European Union. A judgment was issued in case CJEU C-476/11 on 26 September 2013.

Decision of the Court:

The Supreme Court referred to CJEU C-476/11 and stated that an occupational pension scheme is exempted from the prohibition of discrimination on grounds of age if it can be justified under EU law and especially under article 6(1) of Directive 2000/78. The question for the Court was whether the pension scheme in question was encompassed by the exception in section 6a of the Act on Prohibition of Discrimination in the Labour Market etc.

The Supreme Court grounded on CJEU C-476/11 concluded that the aim of the pension scheme constitutes a "legitimate aim" as it takes into account the interests of all employees in the company.

Hereafter, the Court assessed whether the age-related increases in contributions complied with the principle of proportionality. The Court argued that the employer was not under any obligation in law or based in any collective agreement to contribute to a pension scheme. According to the Court, the employer also could have precluded younger employees by setting a minimum age for participating in the pension scheme. Instead the employer had managed to include more employees in the pension scheme because the pension contributions were based on age. Based on that background the Court concluded that the detriments resulting from the differential treatment on account of age were offset by the woman's benefits from the occupational pension scheme and that the principle of proportionality was not violated.

Thus, the judgment from the Western High Court was upheld and the employer was acquitted.

Key points of analysis:

Occupational pension schemes with pension contributions that increase with older age do not constitute illegal age discrimination if they are legitimate and comply with the principle of proportionality. To be in accordance with EU law, such pension schemes must also be applied in a consistent and systematic manner.

Internet link source:

<http://domstol.fe1.tangora.com/Domsoversigt-%28Højesteretten%29.31478.aspx?recordid31478=1129>

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