

On Article 7– Equal Pay for Work of Equal Value

Comments on the Government Report

The Government in its Report notes that “Japan has long prohibited gender discrimination under Article 4 of the Labor Standards Law,” (paragraph 63) but the court cases involving the Article reveals the following.

1) The wage discrimination case against Kanematsu Case took 14 years, because the Article did not included an explicit reference to the principle of equal pay for work of equal value.

2) In a case, in which non-regular workers claimed equal pay for work of equal value in comparison with regular workers, the Japanese courts have maintained that the principle was not recognized in substantive law.

A legal policy program introducing the principle applicable not just between men and women but to all workers in law is necessary.

WWN calls for the explicit inclusion of the principle of equal pay for work of equal value in the Labor Standards Law, and the establishment of gender-neutral job evaluation system.

Case Reports

[Chugoku Electric Power Co., Case](#)

I joined the Chugoku Electric Power Co., in 1981. For 30 years since then, I have been performing my work conscientiously, but in May 2008, I filed a lawsuit against the employer for the discriminatory wages and ranking due to the current qualification system.

However the judgment issued on March 17, 2011 dismissed my claim. The court found that male employees were promoted faster than women, and that there was a difference between men and women in the numbers of years spent at each rank. But it quoted from the results of an employee questionnaire conducted by the company in 1997 (14 years ago), to dismiss my suit. It said that, “among the female employees of the respondent, there seem to be quite a number who say they will be employed only until they get married, or give birth, or that women should stay at home. It cannot be denied that, as a consequence of the effects of such

understanding on the labor morale, there was a possibility that there would be female employees who would be given lower assessment than their male colleagues in the personnel assessment. “ The judgment is very problematic, as it justifies discriminatory treatment using the work consciousness of women. It places the responsibility for the discrimination on the women.

I appealed, and now the case is at the Hiroshima Appeals Court. My lawyers and I are uniting our efforts to do whatever we can to overturn the unjust judgment at the District Court.

Kanematsu Case

The wage gap between men and women remains wide, and the Committee on the Elimination of Discrimination against Women noted that it was “also concerned about the persistence of a very high gender-based wage gap of 32.2 per cent in hourly earnings among full-time workers and of an even higher gender-based wage gap among part-time workers.” (paragraph 45, CEDAW/C/JPN/CO/6)

The 6 plaintiffs working for the trading company, Kanematsu Corp., filed their suit at the Tokyo District Court in August 1995. The appeal to the Supreme Court was dismissed 14 years later in October 2009, finalizing the Appeals Court judgment in favor of the plaintiffs. The Appeals Court had held that the track-based system, in which a 55 year old woman could not earn more than a 27 year old man, violated Article 4 of the Labor Standards Act.

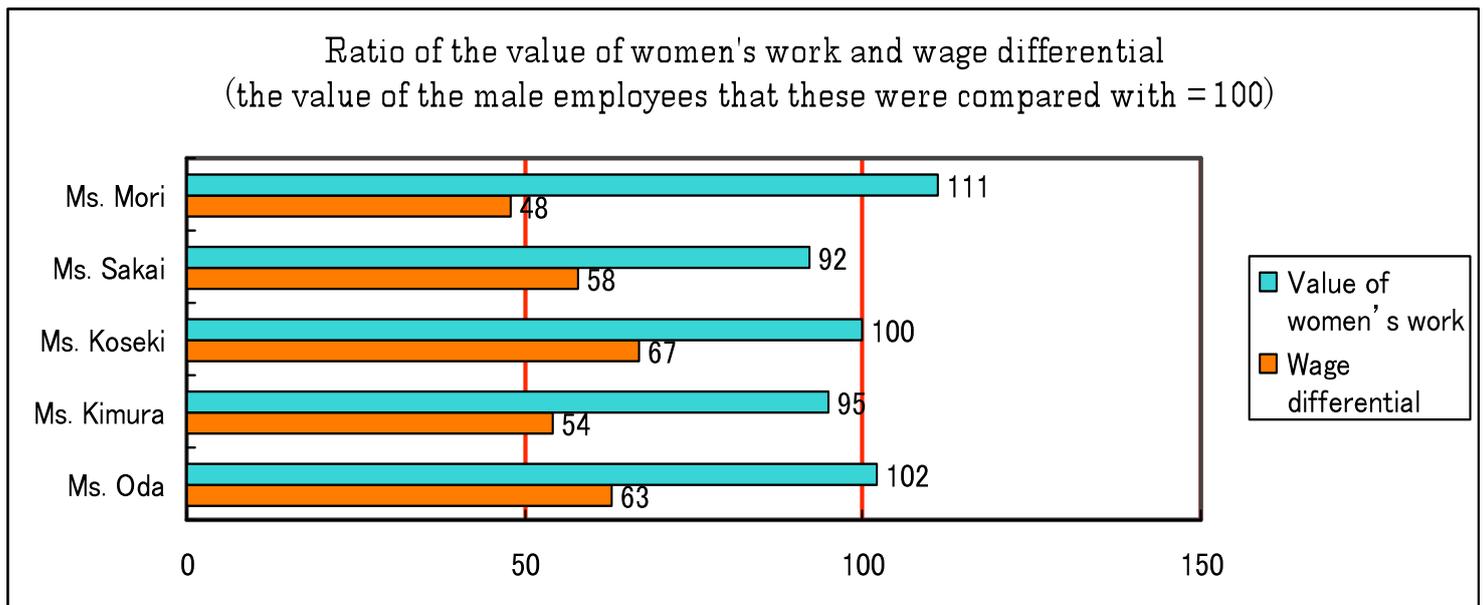
WWN has argued that the reason that the Kanematsu case took so long to become final, and the cases against the 3 Sumitomo manufacturers as well as the Okaya & Co., case took more than 10 years, was the non-existence of the principle of equal pay for work of equal value and a gender neutral job evaluation system. WWN has informed the ILO and CEDAW of the situation regarding the judicial process.

As a result, the Committee of Experts on the Application of Conventions and Recommendations has requested the Japanese Government in March 2008 to take measures to include the principle of equal pay for work of equal value in its laws. Also, in August 2009, CEDAW expressed its concern “about the absence in the Labor Standards Law of a provision recognizing the principle of equal pay for equal work and work of equal value in accordance with the Convention and ILO

Convention No. 100” in its Concluding Comments.

The gender-neutral job evaluation system contributed to the successful outcome of the Kanematsu case. As a result of the evaluation, as shown in the chart below, the work by Ms. Mori was evaluated at 111, but her real pay was 48% of that of her male counterpart. Ms. Koseki was evaluated at 100, so her work was evaluated equal to that of her male counterpart, but she was earning only 67% of his pay.

As the case shows, it was the gender neutral job analysis and evaluation, that made it possible to overcome the difficulties of not having an explicit provision on the principle of equal pay for work of equal value in Article 4 of the Labor Standards Act. The judges in the case understood the evaluation, proving that the job evaluation was effective in eliminating the wage gap between men and women.



Kyoto City Gender Equality Center Case

A female part-time employee of the Kyoto City Gender Equality Center sued her employers for compensation for wage discrimination at the Kyoto District Court. Her pay was disproportionately lower than that of a full-time employee, and she claimed that the treatment was against the principle of equal pay for work of equal value. The Court ruled against the plaintiff on July 9, 2008.

The Osaka Appeals Court acknowledged that Article 2 paragraph 1 of the ILO Convention No. 100 mentioned the principle of equal pay for work of equal value, but noted that “Article 3 paragraph 1 of the Convention merely provided that ‘Where such action will assist in giving effect to the provisions of this Convention measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed’ and the actual implementation of the principle was left to the state parties. Therefore the Convention was not self-executing” and the Court ruled out the application of the principle. It also held that the Article 7 of the International Covenant on Economic, Social and Cultural Rights as well as Article 11 paragraph 1 of the Convention on the Elimination of All Forms of Discrimination against Women were not self-executing.

Further, the Appeals Court noted on Article 4 of the Labor Standards Act that the wording of the Article, “An employer shall not engage in discriminatory treatment of a woman as compared with a man with respect to wages by reason of the worker being a woman” merely prohibited wage discrimination between men and women from the perspective of gender discrimination, and could not be interpreted to stipulate the principle of equal pay of work of equal value. The judgment shows that the courts in Japan have ruled that the principle of equal pay for work of equal value was not found in the positive law.