

## **WOMEN MUST BE ABLE TO RETIRE AT THE SAME AGE AS MEN, 23 MAR 2012**

MARCH 23 — The Joint Action Group for Gender Equality (JAG) is deeply disappointed by the recent Court of Appeal decision to dismiss an appeal by eight women who were forcibly retired by their employer, Guppy Plastic Industries, after they reached the age of 50. Men employed at the company are able to work until they are 55 years of age. This difference in retirement age for men and women is a clear case of gender-based discrimination.

In 2001, the eight women workers were forced to retire after a new handbook of employment regulations was introduced by the company, in which the difference in retirement age was stipulated. The women filed a complaint at the Industrial Court.

In 2008, the Industrial Court decided in favour of the women workers, finding that the difference in retirement age constituted gender discrimination. Guppy Plastic Industries sought a review of this decision and in 2010 the High Court overturned the Industrial Court's decision, finding in favour of the company.

The eight women appealed the 2010 High Court decision. On March 21, 2012, the Court of Appeal dismissed the women's appeal. The decision of the three-member panel of judges was unanimous. Judge Datuk K.N. Segara reportedly said that the company was merely following its own employment regulations and that it was the industry norm to have different retirement ages.

JAG disagrees with the judges — the argument that there is no discrimination because the company was merely following its own employment regulations and was acting in accordance with the industry norm is not acceptable. JAG wishes to stress that companies' harmful and/or discriminatory policies cannot be accepted when they violate Article 8(2) of the Federal Constitution, which prohibits discrimination on the grounds of gender.

Women must not be discriminated against by being forced to retire at a younger age than men — such a practice effectively robs women of five years of salary and benefits. The United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Malaysia is a party, defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

The provisions of CEDAW apply to all fields, including, “contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women.”

In July 2011, in a judgment by Justice Zaleha Yusof in the Shah Alam High Court in relation to a woman’s job offer being revoked because of pregnancy, it was affirmed that CEDAW has the “force of law” and is “binding” on Malaysia.

All arms of the Malaysian government, including the judiciary, legislature and executive, have a legal obligation under CEDAW to ensure that there is no discrimination based on gender.

By finding against the women, the judges in the Court of Appeal have not fulfilled this obligation. This decision sends a message to employers that gender discrimination is a non-issue and is acceptable.

Ironically, according to the women’s lawyer, it is often the industry norm that upon reaching the age of 50, women workers in the plastics industry are forced to retire, and many are then re-hired on a short-term contract basis. Besides elements of labour exploitation, their livelihood becomes insecure as they do not receive the benefits of permanent employment. Women are often disproportionately and negatively affected by unfair and unjust labour practices.

This discrimination is unacceptable and must not continue.

- The Joint Action Group for Gender Equality (JAG) comprises eight organisations.
- This is the personal opinion of the writer or publication. The Malaysian Insider does not endorse the view unless specified.

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