Dung Thi Thuy Nguyen v. The Netherlands

Communication No. 3/2004, UN Doc. CEDAW/C/36/D/3/2004 (29 August 2006).

Country: Netherlands
Region: Europe
Year: 2006
Court: Committee for the Elimination of All Forms of Discrimination against Women Committee for the Elimination of All Forms of Discrimination against Women
Health Topics: Health systems and financing, Sexual and reproductive health
Human Rights: Freedom from discrimination, Right to social security

Facts

The author was a resident of the Netherlands who was employed in a part-time salaried position and was also simultaneously self-employed, working with her husband at his business. She was insured under the Sickness Benefits Act (â€œZWâ€•) in relation to her salaried position and under the Invalidity Insurance (Self-Employed Persons) Act (â€œWAZâ€•) in relation to her position in her husbandâ€™s business. Both acts provide benefits for maternity leave to compensate women for their loss of income during pregnancy.

In 1999 the author received maternity leave benefits under the ZW, but was denied maternity benefits under the WAZ because the WAZ contained an â€œanti-accumulation clause,â€• section 59 (4), preventing an individual from receiving maternity benefits under the WAZ if that individual was also receiving maternity benefits under the ZW, unless the individual was entitled to benefits that exceeded the availability of benefits under the ZW. The author was not entitled to benefits from her work with her husband that exceeded her benefits from her salaried position.

The author objected to the National Institute for Social Insurance, which was rejected. The author then applied for review by the Breda District Court, which dismissed her application. She then appealed to the Central Appeals Tribunal, which found that section 59 (4) of the WAZ was not discriminatory to women.

In 2002 the author took a second maternity leave and applied for benefits. Her entitlement to benefits under the WAZ exceed her entitlement to benefits under the ZW, and she was therefore entitled to benefits under the ZW and in addition, to the difference between her available benefits under the WAZ and those to be received under the ZW. The author appealed this decision, seeking full benefits under both acts, but withdrew her appeal after the Central Appeals Tribunal rendered its decision on the authorâ€™s first pregnancy and application for benefits.

The author argued that section 59 (4) of the WAZ violated article 11 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) by prohibiting full compensation for income lost due to pregnancy to women who worked as salaried employees and were also self-employed, thereby subjecting such women to discrimination due to the condition of pregnancy.

The Netherlands argued that maternity benefits available under the WAZ are for the exclusive benefit of women and that article 11 of CEDAW did not require full compensation for lost income due to pregnancy. The Netherlands argued that the compensation provided under its insurance schemes (ZW and WAZ) were sufficient under article 11.

Decision and Reasoning

The Committee found that section 59 (4) of the WAZ which prevented the author from receiving full maternity benefits under both the ZW and the WAZ did not violate article 11 of CEDAW. The Committee found that article 11 did not require full compensation for income lost due to pregnancy and that the authorâ€™s inability to receive full benefits under WAZ was a result of her status as both self-employed and a part-time salaried employee.

Decision Excerpts

â€œThe aim of article 11, paragraph 2, is to address discrimination against women working in gainful employment

outside the home on grounds of pregnancy and childbirth. The Committee considers that the author has not shown that the application of the 59 (4) of the WAZ was discriminatory towards her as a woman on the grounds laid down in article 11, paragraph 2 of the Convention, namely of marriage or maternity. The Committee is of the view that the grounds for the alleged differential treatment had to do with the fact that she was a salaried employee and worked as a co-working spouse in her husbandâ€™s enterprise at the same time.

Article 11, paragraph 2 (b), obliges States parties in such cases to introduce maternity leave with pay or comparable social benefits without loss of former employment, seniority or social allowances. The Committee notes that article 11, paragraph 2 (b), does not use the term â€œfullâ€• pay, nor does it use â€œfull compensation f loss of incomeâ€• resulting from pregnancy and childbirth. In other words, the Convention leaves to States parties a certain margin of discretion to devise a system of maternity leave benefits to fulfill Convention requirements. The Committee notes that the State partyâ€™s legislation provides that self-employed women and co-working spouses as well as salaried women are entitled to paid maternity leave â€“ albeit under different insurance schemes. Entitlements under both schemes may be claimed simultaneously and awarded as long as the two together do not exceed a specified maximum amount. In such cases, contributions to the scheme covering self-employed women and co-working spouses are adjusted with income from their salaried employment. It is within the State partyâ€™s margin of discretion to determine the appropriate maternity benefits within the meaning of article 11, paragraph 2 (b) of the Convention for all employed women, with separate rules for self-employed women that take into account fluctuating income and related contributions. It is also within the State partyâ€™s margin of discretion to apply those rules in combination to women who are partly self-employed and partly salaried workers.â€• Page 13, paragraph 10.2.

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