

Protection against Age Discrimination In India



ALTACIT GLOBAL
Attorneys-at-Law



PROTECTION AGAINST AGE DISCRIMINATION IN INDIA

Ageism is stereotyping and discrimination against individuals on the basis of age. The decline in physical state associated with ageing is only natural and one cannot be put to disadvantageous position because of his/her age. In this fast-paced growing economy, 'Age' of a person plays a major role in Workplace in determining the term of employment, payment, retirement, and benefits. The age divide in younger and older population is also growing exponentially, paving way for Age discrimination in employment and workplace. More often than not, the younger workers are preferred for various reasons ranging from adaptability, energy level to lesser monetary expectations compared to their older peers. This kind of discrimination, solely on the basis of age is detrimental to the country's economic progress.

Ageism may not be very evident. Some of the examples of age discrimination in a workplace are:

- a. Denying a job for reasons relating to age
- b. Laying off older workers
- c. Comments or remarks on performances because of age
- d. Denying promotion because of age
- e. Age related jokes

Unlike many developed countries, India does not have a codified law to address age discrimination specifically. The constitution of India guarantees anti-discrimination by state on the grounds of religion, race, caste, sex and place of birth as a fundamental right as envisaged under Article 15, including equal employment opportunities under Article 16. However, it does not guarantee protection to individuals from discrimination on the basis of age, as a fundamental right. It is pertinent to note that these rights are available only against state.

LEGAL REMEDIES:

As there is no statutory provision in India addressing discrimination based on age, no penal provisions are prescribed for this offence. However, under common law, civil remedies can be sought for unfair discrimination relating to employment, termination, wages, remuneration, benefits, etc and not solely for age discrimination. For example, if a person is terminated from his employment without justifiable reasons and without notice, he/she can approach the civil courts, labour courts or service tribunals based on the nature of claims and category of worker¹. Section 25 of the *Industrial Disputes Act, 1947*, provides for the employer to fulfil certain conditions before

¹ <http://www.agediscrimination.info/international-age-discrimination/india>

layoff and retrenchment of any employee and also provides for reemployment of retrenched workmen.² Section 2(ra) of the Fifth Schedule of the Act lists the Unfair Labour Practices. Any partiality or granting favour to particular group of workmen or discharge or dismiss workmen by way of victimisation and not in good faith are termed 'unfair practises'³ and Section 25T of the Industrial Disputes Act 1947 read with Fifth Schedule prohibits such unfair labour practices.

The Industrial Employment (Standing Orders) Act, 1946 and Rules with appropriate State government's standing orders aim to set up fair industrial practices and prescribe conditions of employment and making the same known to its workmen. The act provides for means of redressal for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants. It also provides for superannuation or retirement age. The retirement age is thrust on employees, including private sector and differs from one state to the other and as per the respective State's standing orders. The age limit for retirement and private sectors that are covered differ vastly from one State to the other, thereby creating differences in payment benefits. The superannuation differs among verticals as well, deepening the already existing unfair inequality in retirement age. At present the retirement age ranges from 60 – 65 years in the government sector and anywhere between 60 to 65 years in private sector.

Given the complex, often evaded and ignored issue on age related discrimination in workplace and employment, and the lack of exclusive law to address the same, at present, civil remedies are the only available option even for a highly unjustified discrimination basis age. Even in *Air India Vs. Nergesh Meerza and Others*⁴, the Honourable Supreme court of India rejected the claim of disparity in retirement age of the air hostesses and male crew members. Although the absolute discretion of unguided and uncontrolled power of Managing Director to extend the services of Air Hostesses beyond 35 years, if medically fit, was struck down by the Court for discrimination of wide powers given to the Managing Director, the grievance of inequality in the retirement age was denied.

In *State Of U.P vs Dayanand Chakrawarty & Ors*⁵, the regulation 31 in contention framed by the Nigam prescribing two separate age of superannuation for similarly situated employees were scrutinised and the Supreme Court held that "as employees appointed from different source, after their appointment were treated alike for the purpose of superannuation under Regulation 31, subsequently solely on the basis of source of recruitment no discrimination can be made and

² Sections 25F and 25N of The Industrial Disputes Act, 1947

³ Section 2(ra) of the Fifth Schedule

⁴ AIR 1981 SC 1829

⁵ AIR 2013 SC 3066 / (2013) 7 SCC 595

differential treatment would not be permissible in the matter of condition of service, including age of superannuation, in absence of an intelligible differentia distinguishing them from each other.”

In *Union Of India & Ors vs Atul Shukla Etc* ⁶ , the Court has observed that “There can be no differential treatment between an employee directly recruited vis-a-vis another who is promoted. So long as the two employees are a part of the same cadre, they cannot be treated differently either for purposes of pay and allowances or other conditions of service, including the age of superannuation.”

There is a social norm to address the needs of all age groups in a society. To create an equitable workplace, acknowledging and addressing the discrimination and creating dialogue around the same are the way forward. Addressing age discrimination is critical more than ever as it is blatantly evident and alarming and calls for proactive measures and legislations.

- Shelley Anandhavalli E., Associate Partner at Altacit Global.

⁶ (2014) 10 SCC 432