2001

Mary Ann Turner v. Department of Employment Security and Board of Review of the Industrial Commission of Utah : Brief of Respondent

Utah Supreme Court

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BRIEF

MARY ANN TURNER,

Plaintiff,

vs.

DEPARTMENT OF EMPLOYMENT SECURITY AND BOARD OF REVIEW OF THE INDUSTRIAL COMMISSION OF UTAH,

Defendants.

Case No. 13395

PLAINTIFF'S SUPPLEMENTAL BRIEF

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CASES CITED

IN THE SUPREME COURT
OF THE STATE OF UTAH

MARY ANN TURNER,	:	
Plaintiff,	:	
vs.	:	Case No. 13395
DEPARTMENT OF EMPLOYMENT SECURITY AND BOARD OF REVIEW OF THE INDUSTRIAL COMMISSION OF UTAH,	:	
Defendants.	:	

PLAINTIFF'S SUPPLEMENTAL BRIEF

I. RECENT CASES SUPPORT PLAINTIFF'S CLAIM THAT SECTION 35-4-5(h), UTAH CODE ANN. (1953) IS VOID BECAUSE IT IS A VIOLATION OF AMENDMENT 14 OF THE UNITED STATES CONSTITUTION.

Two current cases have been cited by defendants in their brief to bolster their denial that the Equal Protection Clause mandates a declaration that Section 35-4-5(h) of the Utah Code Ann. is void. The first of those cases, Hanson v. Hutt, 83 Wash. 2d 195, 517 P.2d 599

(1974) adopts precisely the argument made by the plaintiff in this matter. The other case, Geduldig v. Aiello, ____ U.S. ____, 41 L.Ed 256, 95 S.Ct. 2485 (June 1974) does provide superficial support for defendants' argument, but is clearly distinguishable from the case at issue.

The State of Washington, like the State of Utah, has adopted a more enlightened view toward the relationship of government to women than that traditionally found in the federal system. This view is well exemplified in the decision of the Washington Supreme Court in Hanson v. Hutt, 83 Wash. 2d 195, 517 P.2d 599 (1974). Hanson involved a situation identical to the one before this Court. Unemployment compensation was denied the respondents in the case because they were pregnant. Section 50.20.030 of the RCW prohibited any unemployment

payments to be made to any pregnant woman for seventeen weeks prior to and six weeks subsequent to the date the baby was due. The Court held that the statute violated the Privileges and Immunities Clause of the state constitution and the Equal Protection Clause of the federal constitution.

The reasoning of the Supreme Court is cogent. The Court first concludes that the unemployment compensation provision is discriminatory on the basis of sex. "It is clear that only women must remain barren to be eligible for and to receive unemployment compensation." The Utah statute is equally discriminatory -- it has the same provision.

The Court then turns to the question of whether or not the provision is a violation of equal protection provisions in the state and federal constitutions. Relying upon the California Supreme Court decision in Sail'er

Inn, Inc. v. Kirby, 5 Cal.3d 1, 18-20, 95 Cal. Rptr. 329, 340, 485 P.2d 529, 540 (1971) the Washington court held that discrimination on the basis of sex in inherently suspect, just as is discrimination on the basis of race. The California opinion is the most complete in its rationale.

> Sex, like race and lineage, is an immutable trait, a status into which the class members are locked by the accident of birth . . .. The result is that the whole class is relegated to an inferior legal status without regard to the capabilities or characteristics of its individual members . . ..
>
> Laws which disable women from full participation in the political, business and economic arenas are often characterized as "protective" and beneficial. Those same laws applied to racial or ethnic minorities would readily be recognized as invidious and impermissible. The pedestal upon which women have been placed has all too often, upon closer inspection, been revealed as a cage.

The defendants rely upon the United States Supreme Court opinion in Geduldig v. Aiello,

supra., as support for their contention that the Utah statute is constitutional. In Aiello the United States Supreme Court upheld a medical disability insurance program that excluded pregnancy as a basis for coverage. The Court held that it was reasonable to provide disability insurance that covered some causes of disability but did not cover pregnancy.

The facts in Aiello differ from those in this case in several ways.

1. Aiello involved a medical disability insurance program which was offered as an alternative to private programs of equal or superior coverage. This case involves unemployment insurance that is mandatory, and run only by the state.

2. The California program was funded completely by contributions by the employees. The Utah program is funded by

compulsory contributions made by employers. Those contributions must be in addition to the salaries of employees.

3. The California statute applies to all women who are otherwise eligible but who cannot work during pregnancy. The Utah statute, being an unemployment compensation statute, applies only to those women seeking employment and able to accept it.

These differences are all significant. The Court considered it relevant that the program operated completely independently of the state even though it was established by statute. Although the Utah program is self-supporting there is a strong state connection with its daily operation. The Court was also concerned because the program was funded completely by employee contributions. Because many low income employees were covered, the Court

recognized a legitimate interest in maximizing coverage for the subscribers without increasing payments. Finally, the purpose of the California statute was to provide disability insurance for some kinds of disabilities. The purpose of the Utah statute is to assist people, like Mrs. Turner, who are willing to work, and actively seeking work.

The Supreme Court used the rational basis test in Aiello as defendants have claimed. However, Justice Stewart states clearly, in Footnote 20, that the Aiello opinion was limited to its facts and should not be considered a restriction upon Reed v. Reed, 404 U.S. 71, 30 L.Ed. 2d, 225, 92 S.Ct. 251 (1971) or Frontiero v. Richardson, 411 U.S. 677, 36 L.Ed.2d 503, 93 S.Ct. 1764 (1973). The additional fact in Mrs. Turner's case that is not present in Aiello is the statutory requirement that the recipient be part of the available labor force. Defendants

agree that the California program is like the Utah plan because the Utah statute has other exclusions, such as the disabled, pensioners, those who quit or are terminated for cause. The theory is that pregnancy is related to emplc ability -- that is, employers may be reluctant to hire pregnant women. The employer's attitude is not relevant under the Utah statute, nor should it be to the Court. The statutory concern is whether claimant is willing and able to work. Mrs. Turner was both.

Considering all the cases cited by plaintiff and defendants, the standard of review appropriate for this Court is whether sex is a suspect classification under the Equal Protection doctrine. If so, Section 34-4-5(h) is clearly void under the Fourteenth Amendment of the United States Constitution and under the Utah Constitution, Article I, Section 2 and Article IV,

Section 1. Even under the rational basis test, the specific statutory provision must fail because it stands alone, apart from every defined purpose and function of the Act.

CONCLUSION

For the reasons stated above, plaintiff Mary Ann Turner urges this Court to declare Section 35-4-5(h) of the Utah Code Ann. (1953) to be void as a violation of the Utah Constitution and the 14th Amendment of the United States Constitution and to order the Department of Employment Security to pay Mrs. Turner those additional amounts of unemployment compensation to which she would otherwise have been entitled, together with costs of this action.

Respectfully submitted this 15th day of January, 1975.

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