

Interpretation of Work Rules on Conversion from Fixed-Term to Open-Ended Contract for a College Lecturer

The Fukuhara Gakuen (Kyushu Women's Junior College) Case

Supreme Court (Dec. 1, 2016) 1156 *Rohan* 5

Yota Yamamoto

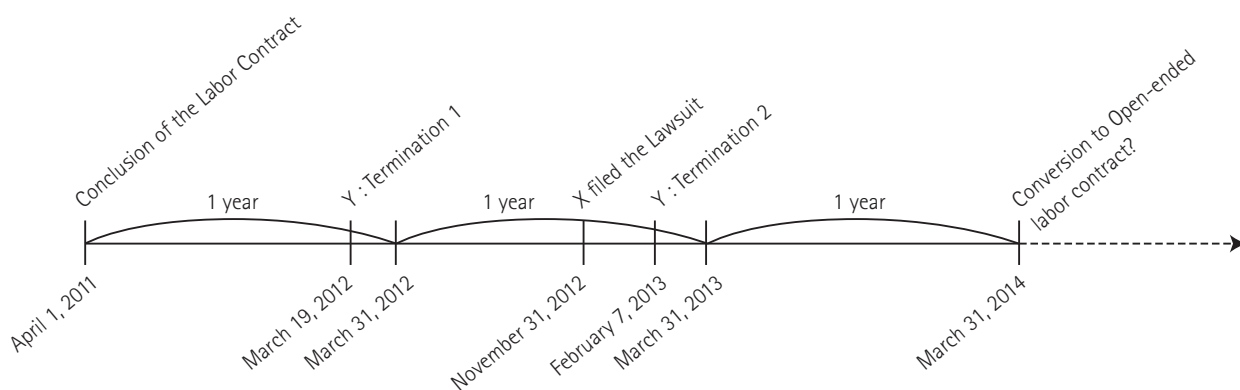
Facts On April 1, 2011, X entered a one-year fixed-term labor contract until March 31, 2012 (the Labor Contract) with Y (Fukuoka Gakuen) and started working as a lecturer (contract employee) at a junior college operated by Y. Y's work rules on contract employees as applied to X (the Regulations) included provisions to the effect that the contract term of a contract employee could be renewed up to a maximum of three years, and that a contract employee could convert to an open-ended (non-fixed) labor contract upon expiration of the three-year maximum renewal period, on condition that Y deemed it necessary to do so in consideration of the employee's work performance. In the university operated by Y, there were ten contract employees who had worked for more than three years as of March 31, 2012, and eight of them had converted to open-ended labor contracts upon expiration of the three-year maximum renewal period.

On March 19, 2012, Y informed X that the Labor Contract would be terminated as of the 31st of that

month (Termination¹ 1). Therefore, on November 6, 2012, X filed a lawsuit against Y seeking confirmation of X's status of entitlement under a labor contract (the Lawsuit). On February 7, 2013, while the Lawsuit was in progress, Y informed X that even if the Labor Contract had not been terminated upon Termination 1, it would terminate the Labor Contract as of March 31, 2013 (Termination 2).

The issue contested at the Supreme Court was whether the Labor Contract had been converted to an open-ended labor contract upon expiration of the three-year maximum renewal period on April 1, 2014.

Judgment The Supreme Court Judgment of December 1, 2016 was as follows. "In that the Labor Contract was concluded as a fixed-term labor contract with



Process of this case

a term of one year, it was clearly specified in the Regulations that govern its content that the renewal limit of the contract term was three years and that the term of a labor contract could only be made open-ended on expiration thereof if Y had deemed it necessary in consideration of the work performance of the contract employee requesting it; X may be assumed to have concluded the Labor Contract in full awareness of this fact. In addition to the above stipulation in the Labor Contract, it must be said that whether or not the Labor Contract was to be made open-ended was entrusted to the judgment of Y in consideration of X's work performance, in view of the fact that X was employed by Y as a faculty member of the college and that there is generally assumed to be fluidity in the employment of faculty members, and moreover that in the three universities operated by Y, there were several other contract employees whose labor contracts did not become open-ended after expiration of the three-year maximum renewal period. It, therefore, cannot be construed that the content of the Labor Contract was such that it would automatically convert to an open-ended labor contract upon expiration of the three-year maximum renewal period."

Commentary

In Japanese labor law, there is no legal regulation requiring just cause when concluding a fixed-term labor contract. Therefore, when an employer hires a worker (particularly in a specialist occupation), the format sometimes adopted is to conclude (or renew) a fixed-term labor contract for trial purposes at first, and to ascertain the worker's aptitude during that time. In such cases, the relationship with the worker converts to an open-ended labor contract if the employer judges the worker to have an aptitude, but if the employer judges him/her to have no aptitude, the normal rule is for the relationship to end upon expiration of the fixed-term labor contract.

In this case, similarly, Y had adopted the hiring format of employing their faculty members first as contract employees for a maximum of three years by concluding and renewing one-year fixed-term labor contracts, and then judging whether or not to convert to open-ended labor contracts upon

expiration of the three-year maximum renewal period, based on their work performance during that time. The direct cause of the dispute in this case was that Y originally informed X that it would not renew the Labor Contract before reaching the first renewal (Termination 1). However, the ruling by the Kokura Branch of the Fukuoka District Court on February 27, 2014 deemed this Termination 1 and the Termination 2 subsequently made during the Lawsuit, as unlawful under the "doctrine restricting termination of employment"² (Article 19 (ii) of the current Labor Contracts Act). It judged that the Labor Contract should have been renewed twice unless it was unlawfully terminated, giving rise to a situation in which the expiration of the three-year maximum renewal period was reached while the Lawsuit was in progress.

Based on this situation, the ruling by the Fukuoka High Court on December 12, 2014 deemed that the period of three years in this case was "a probation period, and in the absence of exceptional circumstances, it would be reasonable to expect conversion to an open-ended labor contract," thus supporting the conversion of the Labor Contract to an open-ended labor contract.

In the supplementary opinion of Judge Ryuko Sakurai added to the Supreme Court ruling, this judgment by the Fukuoka High Court was critically deemed as having "borrowed" the aforementioned doctrine restricting termination of employment (Article 19, (ii) of the Labor Contracts Act) to cover the conversion of fixed-term labor contracts to open-ended labor contracts.

Reversing the Fukuoka High Court, the Supreme Court judged that the decision whether or not X could have converted to open-ended contract status was "entrusted to the judgment of Y," in view of (i) the fact that, in the Regulations, the rule on conversion from a fixed-term to an open-ended labor contract was explicitly stipulated, (ii) the fact that there is generally fluidity in the employment of college faculty members, and (iii) the actual situation that several of the other contract employees did not convert to open-ended labor contracts. In conclusion, therefore, it denied the conversion.

In other words, based on the hiring format used in this case, the employer's discretion regarding the

conversion from fixed-term to open-ended contracts would be recognized if rules to this end have been clearly stipulated (i), if actual contract conversion has been made in line with these rules (iii), and if it could be considered to be the type of job for which it would be reasonable to adopt this kind of hiring format (ii). To put it differently, however, there is room to deny discretion on the employer's part in cases where actual contract conversion has not been made in line with conditions presented in advance, or when it is not deemed reasonable to adopt the hiring format used in this case for the type of occupation in question.

The Supreme Court ruling of June 5, 1990 on the *Kobe Koryo Gakuen Case* indicated that, when a period has been specified in a labor contract for the purpose of evaluating aptitude, in principle, the said labor contract should be construed not as a fixed-term labor contract but as an open-ended labor contract with a probation period. In contrast to this, because X did not make a claim based on that Supreme Court ruling in this case, the Kokura Branch of the Fukuoka District Court, the Fukuoka High Court and the Supreme Court all made their judgments on the premise that the Labor Contract was a fixed-term labor contract until expiration of the contract term renewal limit. Therefore, this case could be considered basically unrelated to the Supreme Court ruling on the *Kobe Koryo Gakuen Case* (Supreme Court (Jun. 5, 1990) 564 *Rohan* 7). Given the fact

that just cause requirement for concluding fixed-term contracts was discussed but not introduced when the Labor Contracts Act was amended in 2012, the judgment in the Supreme Court ruling on the *Kobe Koryo Gakuen Case* will need to be studied anew.

1. Termination means refusal to renew a fixed-term contract.
2. The doctrine restricting termination of employment

This is the principle whereby, when an employer and a worker enter a fixed-term contract, the employment relationship terminates upon expiration of the specified term. In Japan, however, the employer must have just cause for terminating the employment relationship with the worker if the worker has a reasonable expectation that the employment relationship will continue when this term expires (whether this reasonable expectation exists is judged in consideration of aspects such as the worker's job content, the number of previous contract renewals, and the employer's indications in word or deed). This means that, if there is no just cause, the legal position on the matter is that the existing fixed-term contract has been renewed.

This rule (the doctrine of termination of employment) was previously based on case law precedents of the Supreme Court (for example, the *Panasonic Plasma Display Case* of December 18, 2009), but following the amendment to the Labor Contracts Act in 2012, it is now governed by Article 19 of the Labor Contracts Act.

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