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Chinese trans woman wins sex discrimination lawsuit against employer in landmark victory

More than a year after she first began her legal fight, a transgender woman in Beijing has won her case against Chinese ecommerce platform Dangdang after the company fired her when she took a leave of absence for her gender confirmation surgery.

By Jiayun Feng

SupChina (06.07.2020) - <https://bit.ly/2ZyBhZw> - More than a year after she first began her legal fight, a transgender woman in Beijing has won her case against Chinese ecommerce platform Dangdang after the company fired her when she took a leave of absence for her gender reassignment surgery.

The ruling was made in January by a Beijing court, which ordered Dangdang to resume its labor contract with the woman, who goes by Ms. Gao 高, and recognize her new gender identity, including giving her the right to use female bathrooms in the company. It wasn't until last week that the news about the judgment circulated on the Chinese internet and attracted national attention.

In 2015, Gao was hired as a product manager in the technology department at Dangdang. Three years later, Gao decided to undergo a sex confirmation surgery. During the summer of 2018, with her supervisor's permission for medical leave, Gao took a roughly two-month break from work for her surgeries. But in September, before Gao was fully recovered following the major transition and was able to return to work, Dangdang terminated her employment, citing reasons such as Gao's "absence of work" and her "mental health."

According to Gao, she believed that her dismissal was discrimination on the basis of her sex. In a termination letter to Gao, the company called her a "person with mental disorders," whose presence would constitute a distraction for her coworkers because they would feel "terrified, uneasy, and awkward." Dangdang also said that Gao's restroom usage would be a problem for the company because both female and male employees had voiced their opposition to Gao using their bathrooms.

About four months after Gao sued Dangdang for unfair dismissal, the Beijing court ruled in her favor in 2019, ordering Dangdang to rehire her and pay her overdue salary of about 120,000 yuan (\$17,097). Dangdang immediately appealed the original decision when it was announced. But the court didn't change its position in its second ruling in January.

Along with the judgment, the court also issued a heartfelt statement explaining the ruling and showing support for the transgender community in China. "We respect and vow to protect the dignity and legal rights of transgender people. Our attitude is based on our respect for individuals' dignity and legal rights. By no means are we encouraging people to change their genders," the court wrote while acknowledging that it would take a long time for the public to be more open-minded about gender identities.

Gao's case has brought unprecedented public attention to the transgender community in China. On Weibo, the hashtag #当当网男员工变性以旷工被解雇# ("Male employee was let go by Dangdang for 'absence of work' after he had a transgender surgery") has generated over 3.6 million views, with most internet users praising the court's ruling. "Transgender people altering their bodies through surgery is not uncommon in this age. The society needs to be more inclusive in regard to this community," a Weibo user wrote.

But the news has also prompted a stream of transphobic comments directed at Gao. "I see no reason to be accepting of him because I think he's a sociopath. He'd better move to a remote place where no one knows him so he could be seen as a woman in the first place," another Weibo user commented.

Gao's is not the first case of a transgender person in China taking legal action after facing alleged job discrimination based on their gender identity. In 2017, a 28-year-old transgender man in Guizhou Province took his employer to court after being fired and told by the company's human resources manager that he looked "unhealthy." Although the court ruled that the dismissal was unlawful because no legitimate reasons were provided upon the man's firing, it decided that the termination was not a result of bias against transgender people.

Refusal to give married same-sex Hong Kong couple public housing 'unconstitutional', rules High Court

Decision comes after legally married pair were refused public housing despite meeting all eligibility criteria. Housing Authority had denied claim because it said marriage must be between a man and a woman.

By Jasmine Siu and Lilian Cheng

South China Morning Post (04.03.2020) - <https://bit.ly/2Q0X4nA> - The Hong Kong government's policy of denying legally married same-sex couples the right to apply for public housing is unlawful and unconstitutional, the High Court has declared.

The court on Wednesday allowed a judicial review mounted by permanent resident Nick Infinger over the Housing Authority's decision to bar him and his husband from renting a public housing flat.

Mr Justice Anderson Chow Ka-ming acknowledged the government was pursuing a legitimate aim of supporting traditional family formations through providing for their housing needs, and that public flats were highly limited.

But the judge also concluded that the authority had failed to justify its differential treatment that had "resulted in an unacceptably harsh burden on same-sex couples lawfully married overseas, including the applicant".

So he quashed the authority's decision and ordered Infinger's application be referred back for fresh consideration with priority.

The case was the first judicial challenge to affect low-income same-sex couples after the city's LGBT community won several high-profile court cases against the government in recent years.

It was put forward by the same lawyers – Michael Vidler and barrister Timothy Parker – who in 2018 successfully challenged the city's immigration policy to grant same-sex partners spousal visas previously available only to heterosexual couples, in a case mounted by a British citizen, known in court as QT.

Vidler said: "Today's judgment will have a real and positive impact on the lives of low-income LGBTI people in Hong Kong."

Infinger said the ruling "highlights yet another example of the discriminatory and unconstitutional government policies that LGBTI people in Hong Kong face every day".

"How many judgments against the government does it take before the government stops relying on discriminatory policies and introduces LGBTI discrimination legislation in Hong Kong?" he said in a statement issued through Vidler's firm.

The court heard Infinger, who was 25 when he filed the legal challenge, married his husband in Canada and applied for public housing under the category of "ordinary family" in March 2018.

His legal team found he had satisfied all the eligibility criteria: he was married; both he and his spouse were permanent Hong Kong residents over the age of 18; and neither owned any domestic properties or exceeded the limits on income or assets.

But the authority rejected the bid on September 7 of the same year, stating with reference to the Oxford English Dictionary that he was ineligible because the relationship between the applicant and family members must be either husband and wife, parent and child, grandparent and grandchild.

The policy meant Infinger was only eligible for non-elderly one-person flats.

Parker argued that the existing framework amounted to "direct and deliberate" exclusion of same-sex couples from housing benefits.

But Abraham Chan Lok-shung SC, for the authority, said the government was entitled to deny public housing to same-sex couples because there were not enough flats to meet the demand of the city's low-income residents.

The authority, however, could not provide reliable data on how many married same-sex couples would apply for family flats if it were not for its policy, or how relaxing this rule would affect the overall availability of public housing.

Chow concluded: "I am not satisfied that the differential treatment under the [policy] is a proportionate means of achieving the family aim."

Rainbow Action, a local LGBT rights group, welcomed the court ruling and urged the government to immediately introduce a sexual orientation discrimination ordinance to protect homosexuals.

In a reply to Post inquiries, a spokesman for the authority said from its records, it had only received the one application from same-sex couples. The authority would carefully study the judgment and seek legal advice for taking appropriate follow-up actions, he added.

"As the authority needs to carefully study the judgment and take appropriate follow-up actions accordingly, we are unable to estimate the impact of the judgment on demand for public rental housing," he said.

The spokesman emphasised that according to the established policy for public rental housing applications, the relationship between the applicant and family members must be either husband and wife, parent and child, grandparent and grandchild. In light of the definition of "husband and wife", the authority did not accept the application of the applicant and his same-sex spouse.

Anthony Chiu Kwok-wai, a member of the authority's subsidised housing committee, believed there was a high chance that the authority would appeal, given the chain effects on housing resources that the court ruling might have.

"There might be many more gay couples who previously did not show an interest who will apply for public housing, thus affecting the waiting time for family applicants, the transfer of titles," Chiu said.

"It also affects the number of people purchasing subsidised housing, as family applicants would have a higher chance to get a flat under the current policy."

Chiu said the authority had not provided any estimated figures in the past, and he would raise the item for discussion in their coming meeting next Tuesday.

Currently, the average waiting time for family applicants stands at 5.4 years, with 151,900 applications in line.

But for the 108,500 non-elderly one-person applications, homes are allocated under the quota and points system. Nine points will be given to an applicant every year, while a singleton has to accrue 438 points to get a public housing flat.

Why is China raising the prospect of same-sex marriage?

As recently as August, a representative had dismissed same-sex marriage as contrary to Chinese culture.

By Eric Baculinao

NBC News (07.01.2020) - <https://nbcnews.to/2xmMLDQ> - China has taken a step forward to allow same-sex marriage, a move that could undo years of discrimination, delight rights activists and give new rights to the LGBTQ community "after years of hiding and struggling."

A body of the National People's Congress, the country's highest law-making institution, has publicly acknowledged petitions to legalize same-sex marriage, a rare development that has triggered a nationwide discussion of a topic that was once taboo.

Expectations are raised that the nation, which is led by the Communist Party, might eventually join the growing number of countries that have passed legislation protecting the rights of lesbian, gay, bisexual, transgender and queer people.

"We were very happy, pleasantly surprised by the news!" declared Peng Yanzi, director of LGBT Rights Advocacy China.

Since the founding of the People's Republic of China in 1949, homosexuality has been banned or suppressed. However, China's open door policies in the early 1980s set in motion social and cultural changes that would lead Beijing to decriminalize homosexuality in 1997 and remove it from an official list of mental disorders in 2001.

In time, major cities would witness lively gay and lesbian scenes with the proliferation of clubs and bars. But many forms of age-old prejudice and restrictions against the LGBTQ population persist, with activists citing issues ranging from employment discrimination and forced "therapy" to lack of "marriage equality."

On Dec. 20, a spokesman was quoted as saying the legislative commission had received more than 230,000 online suggestions and letters on legalizing same-sex marriage. The topic triggered 400 million views on China's Twitter-like Weibo and sparked a lively debate on domestic social media, according to state-run newspapers.

But as recently as August, a representative of the same body had dismissed same-sex marriage as contrary to Chinese culture and stressed that China's marriage system was based on the union of "man and woman."

In China, after collecting public opinion, a bill can be drafted and deliberated several times before it is finalized, published again for public comment and submitted to the National People's Congress Standing Committee for enactment.

"It felt unreal," Gao Qianhui, 21, a lesbian in Shenzhen, just across Hong Kong, said when asked about her reaction to the news from the legislative commission, to which she also wrote a petition supporting same-sex marriage.

"I know it's just a proposal and it's most likely not going to be realized in the near future, but the fact this topic is now publicly and officially on the table gives the LGBT community hope for the first time after years of hiding and struggling," she told NBC News.

The apparent change of stance is "a promising and positive step," said Hu Zhijun, director of PFLAG, another advocacy group named after the large LGBTQ rights group in the United States.

The shift even seemed to extend to the cinema — the first gay kiss of the "Star Wars" film franchise recently made it to China's theaters. That followed a few months after scenes of homosexuality in the biopic "Bohemian Rhapsody" were deleted by Chinese censors.

For China's LGBTQ community, the changing government stance reflects a changing climate of opinion due to the "greater open-mindedness" of the Chinese public, especially the younger generation, Hu said.

That China appears to be moving toward liberalizing its stance on LGBTQ issues reflects the "inevitable trend," Peng said. "As the country becomes stronger economically, its civilization must also keep up."

Given the international environment, same-sex marriage legislation "could be used strategically to improve China's human rights reputation," said Timothy Hildebrandt, an associate professor of social policy at the London School of Economics and Political Science who has conducted in-depth research on China's LGBTQ issues.

"But I doubt that, even if passed, the government would put it into human rights terms," he said, as Beijing could be accused of being "cynical" in light of human rights criticism involving Xinjiang and Hong Kong.

"That these conversations are happening at all, and that the government seems open to potentially putting it on the political agenda, are certainly positive steps," he added.

But Peng and Hu are realistic about the long-term campaigns ahead. While official recognition of the issue of same-sex marriage is an improvement, it may take many years before it could become law.

"The important thing is that it's no longer possible for society to stay where it was 10 years ago," Peng said, arguing that the acceptability of gay marriage to the younger generation has "exceeded" the imagination of Chinese officialdom.

While noting that China has its own dynamics and pace, Hu pointed to Taiwan's legalization of same-sex marriage in May, the first such legalization in Asia, as proof that traditional Chinese culture is open to same-sex unions.

For Hu Xingdou, an independent social affairs commentator based in Beijing who is a former economics professor, China's shifting stance reflects the country's greater engagement with the outside world.

"With globalization, China cannot but take into account the changing legal systems in other countries and will try to join the global mainstream," he said.
