TERMINATION OF CONTRACT OF EMPLOYMENT UNDER JAPANESE LABOR LAW: DISMISSAL IN GENERAL AND CAREER FRAUD

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I. DISMISSAL UNDER JAPANESE LABOR LAW: IN GENERAL

1. JAPANESE FEATURES

Under the present Japanese law, the employer has the right to dismiss his employees. Neither statute, which requires the employer to show his employees reasonable or just causes for the dismissal, nor statute, which imposes the employer to consult his dismissal with workers' representatives, has been promulgated. However, the employer's right to dismiss his employees is, in reality, restricted by both statutory limitations and case law.

It will be safe to say that case law is creating legal theories; the mixture of the prohibition doctrine of abuse of the dismissal rights and of the necessity doctrine of showing just causes of dismissal has been substitute for the statutory prohibition of unfair dismissal. More important feature under the present Japanese law is surely the life-time employment practice which has secured employees from being easily laid off or dismissed by his employer.

This paper will present the statutory framework with case law which has posed legal issues concerning the employer's right to dismiss his employees and the employee's protection to be dismissed under the Japanese law. In order to explain the present situation of the issues, historical analysis as well as sociological analysis is taken into consideration.

2. HISTORICAL ANALYSIS

A) Before the 1925 Factory Act Regulation Amendment

a) Background

In connection with the industrial revolution in Japan, the first Factory Act[1] became effective in 1916. Since then, the World War I, the great depression, the Taisho democracy movement and so forth have changed the Japanese economic structure as well as social conscience about industrial relations, however, the law relating the employer's right to dismiss his employees remained as it had been.

Around the early 1920's, most of cases terminating contracts of employment were due to the employers' dismissals of their employees. One of the authoritative research around these times which was carried out by the Osaka City Authority in 1922, whose jurisdiction covered one of highly industrialized area in Japan, showed that the 90% of all cases investigated was due to the employer's dismissal. Therefore the remaining 10% of them was terminated as a result of voluntary agreements between the employer and his employee. Out of the 50% dismissal cases, the half of which was because of employee's illegal actions, while the 15% of which was owing to the employee's absence from his work without notice to his employer.[2]

b) Employer's Right to Dismiss

Before the 1925 Factory Act Regulation Amendment[3], which put the limitation on the employer's right to dismiss his employees at the first time under the Japanese law, the employer was guaranteed to dismiss his employees at his will at any time with his advance notice as a rule, or without his advance notice in exceptional cases under Civil Code.[4] The Factory Act has no provisions relevant to this issue.

Supreme Court upheld this theory by interpreting Civil Code by stating, "Art. 627 provides that the party of the contract of employment has the right to terminate the contract of employment in any circumstance at any time at his will in the case of no term of the contract of employment agreed between the parties"[5]

In the case that the term of the contract of employment was agreed as five years or more, or lifetime, the party has also the right to terminate the contract of employment after five years period of contract of employment elapses (Art. 626 I).

It is noteworthy that the above-mentioned Civil Code provisions do not differentiate the party of the contract of employment, either the employer or employees. They are regarded as equal legal entities. Therefore no consideration of the protection of employees from unfair dismissals, judging from the wording of Civil Code, is given.

Only things written in it were provisions to protect the party of the contract of employment regardless of a employer's status or a employee's status.

c) Advance Notice to Dismissal

The two month advance notice to dismissal delivered to the other party of the contract of employment is required by the Civil Code in the case that no term of the contract of employment was agreed between the parties (Art. 627 II). However, the three month advance notice to dismissal is prescribed in the Civil Code in the case that five years or more, or lifetime employment was agreed between the parties (Art. 626 I).

These advance notice provisions under the Civil Code were understood as those characterized as a social policy type of provisions which intended to protect workers from prompt termination of the contract of employment taken by the employer.[6] This interpretation raised by the leading authority at that time seems to be influenced by the German authorities interpreting the German Civil Code.[7]

In practices, advance notice provisions in workrules or company rules were somehow prevailing among companies located in highly industrialized area such as Osaka. The Osaka City Authority research found the fact that 50% of companies investigated provided advance notice stipulations in their rules. The 56% of them provide a two week advance notice period which was the same as the Civil Code, while the 30% of them guaranteed more than two week period. The 13% of them was less than two weeks which were violating Civil Code.[8]

d) Special Treatment for Apprentices

Apprentices are allowed to be bound by the contract of employment for ten years or less. Therefore they may be terminated their contract of employment at any time after ten years or more (Art. 626 I). Advance notice to terminate the contract of employment is also extended to three months (Art. 626 II). These provisions will be justified on the ground that apprenticeship requires longer term to achieve the objective of the contract of employment.

e) Prompt Dismissal with Unavoidable Causes

Civil Code provides that the party of the contract of employment can justify prompt notice of termination of the contract of employment regardless of an agreement on a term of the contract of employment, if there were unavoidable causes on the side of terminating party (Art. 628). The provision prescribes, however, that the other party can claim

damages when the unavoidable cause was due to the terminating party's failure.

Supreme Count explained this unavoidable cause clause in Civil Code by stating "Art. 628 provides that the party of the contract of employment has the right to terminate the contract under unavoidable causes regardless of existence of an agreed term of the contract of employment."[9] Therefore a geisha girl contract could be terminated by the geisha girl because a geisha girl contract was a lifetime employment contract imposing the geisha girl to serve as a geisha girl or a service girl at traditional Japanese restaurants, therefore any geisha girl contract violated the public policy provided under Civil Code Art. 90.[10] Such illegality of the contract constituted an unavoidable cause justifying to terminate the contract of employment.

The leading authority again gave sound reasoning on the unavoidable cause provision under Civil Code by stating that it was seriously unfair to demand the party of the contract of employment to continue his or her contract under any circumstances including illegal situation.[11]

f) Summation

Before the 1925 Factory Act Regulation Amendment was promulgated, Civil Code was the only statute regulating the dismissal of employees. As Civil Code assumed that both the employer and his employees as equal legal entities, no specific provisions protected employees from the employer's unfair dismissal or prompt dismissal. These Civil Code provisions still effective nowadays, however, under various restrictions imposed by labor law at present.

B) Under the 1925 Factory Act Regulation Amendment

a) Background

The year of 1925 was the first year of Shōwa era during which Japan has developed its economic structure building up to a military-economy compound. Heavy industries such as steel, shipbuilding, machine manufacturing industry started to adopt lifetime employment practices so as to retain skilled workers, and they could accept the government proposals to protect workers under the Regulation Amendment from unfair dismissals. The Government itself took a positive policy to give workers secured feeling of their jobs because it is safe to say that the government also needed labor force in good

quality for its policy expanding economic power into the world market.

b) Legal Framework

The 1925 Factory Act Regulation Amendment put the restriction on the employer's right to dismiss his workers as followings. Any worker could not be dimissed, 1) when a worker was absent from his work because of work-related injury or disease. 2) when she was on maternity leave. 3) When a worker was absent from his work because of the exployer's business necessity except the worker being paid his wages during his absence (Art. 27-2). 4) In case of the employer's violating these provisions, two hundred yen of fine would be imposed (Art. 33).

These provisions superseded those under Civil Code because these provision were special law to general law of Civil Code. In contract to Civil Code provision these provisions dealt employees as not equal to the employer in terms of their legal position under the contract of employment. Employees were placed in economical inferior position to the employer under the Factory Act Regulation Amendment. This is because these provisions can be regarded as labor law or worker's protection law.

c) Advance Notice to Dismissal

The Factory Act Regulation Amendment provided that fourteen days were required as an advance notice period. And if no time to do so, payment equivalent to fourteen days should be paid to the worker dismissed. However, this provision would not be applied to the worker who had employed for fourteen days or less (Art. 27-2 II). Even though the length of fourteen days is almost the same as two weeks provided under Art. 627 of Civil Code, the payment of fourteen days instead in case of no fourteen days guaranteed was a new provision found in the Regulation Amendment. This provision has a penalty of two hundred yen fine when fourteen days advance notice would not be informed to the employees. This sort of penalties was characterized as an administrative nature which made the government to enforce the statutory regulations by its policing power.

d) Unavoidable Causes Justifying Dismissal

The definition of unavoidable causes justifying dismissal was also new to the corresponding provision under Civil Code. The Factory Act Regulation defined it as 1) natural calamity making discontinuation of the business. 2) worker's failure making impossible to continue the contract of business.

In practices worker's failures making impossible to continue the contract of employment provided in company rules. Among company rules, the Department of Labor around that time selected as justifiable unavoidable cases as followings. 1) failure to report his true career, 2) stealing company's goods, 3) revealing company's secret on business, 4) voilence, 5) disturbance of company's order, 6) distruction of companys' goods, 7) violation of safety rules with intent, 8) no possibility of recovery after several punishment from his wrong doing, 9) absence from his work without notice and without reasonable reason, 10) strike or and concerted action his employer.

Except 10), the above-mentioned categories justifying unavoidable causes of dismissal are still sustained these days. As to strike action or concerted activity against the employer, Supreme Court, before the present Constitution was promulgated, upheld that a strike action was a concerted activity intentionally reducing productivity with the purpose of achieving the workers' demand to raise their wages, therefore it violated the objective of the contract of employment, and justified strike action as one of unavoidable causes to dismiss strikers.[12] The leading authority of labor law professor at that time criticized this Supreme Court decision by saying that a strike action could not be interpreted as an unavoidable cause because of its concerted nature of that action.[13]

e) Summation

The 1925 Factory Act Regulation was revolutionary in Japanese labor law history because this provision modified those under Civil Code relevant to the termination of the contract of employment from the worker's protective point of view by giving restrictive reasons for dismissal and provisions an administrative penalties for the employer violating the Regulation. It is noteworthy that the provisions created under the 1925 Factory Act Regulation Amendment are embryos for the 1947 Labor Standard Act.[14] Most of them were transferred to it.

3. PRESENT LAW

A) Background: Lifetime Employment Practices

The lifetime employment practices, together with seniority wage practices, are fundamental feature as a basic ground for the Japanese dismissal of workers.

The lifetime employment practices are broadly defined as the custom of not discharging an employee until he reaches his retirement age; some way between 55 to 60 years of age, while the seniority wage practices is a wage system based primarily on length of service and educational level rather than on the nature of the job. These practices create the Japanese feature of less number of dismissal.

The real world of the lifetime employment coverage is only from 25% to 30% of whole work force in Japan these days.[15] It is essentially applied to the many employees in the big enterprises and public employees.[16] Small enterprises are less competitive and frequently unstable, so that labor mobility increases as a size of enterprise decreases. The groups generally excluded from the lifetime employment practices are, besides small scale enterprises workers, women, temporary workers, subcontracting workers, and daily workers.

The employer profits by retaining services of skilled workers in labor shortage period by this practices,[17] while the workers or employees feel their identification with their companies by this practices.

Supreme Count upheld the lifetime employment idea by requiring of an employer a special reason to refuse the rehiring of the temporary employees whose two month contract of employment had been renewed ten time or more.[18]

B) Legal Framework

a) New Legal Environment

The provisions relating the contract of employment under Civil Code of 1896 are remaining effective as providing general rules, and also those concerning the restrictions of dismissal under the Factory Act Regulation Amendment of 1925 are mostly transplanted into the new Labor Standard Act of 1947. However, these provisions were enriched under the new legal environment after the end of the World War II.

The new 1948 Constitution[19] provides that statutory terms and conditions of employment shall be prescribed in the form of Acts which necessitate parliamental procedures to amed (Art. 2 II) rather than in the form of government regulations which simply require administrative procedures to amend. This is the main reason that the almost same contents of provisions restricting the employer's right to dismiss his employees originaly provided in the Factory Act Regulation

Amendment were moved to the Labor Standard Act. Heavier restrictions were newly introduced into the Labor Standard Act, which are to be explained hereinafter.

The other new legal environment was created by the Trade Union Act[20] of 1945 which liberalized strike actions as legal and collective bargaining agreements as voluntary restrictive tools for preventing unfair or illegal dismissals.

b) Statutory Prohibition of Dismissals

The significant additions to the old Factory Act Regulation Amendment are statutory prohibition of certain types of dismissals.

1) Trade Union Act prohibits discriminatory dismissals because of trade union activities (Art. 7). Supreme Count interpreted that such discriminatory dismissals violating Art. 7 of Trade Union Act should void on the ground that the workers' right to engage in trade union activities was guaranteed under the Constitution Article 28.[21]

2) Labor Standard Act inserted a new provision providing that a discriminatory dismissal because of nationality, creed, and social status is prohibited (Art. 3). Again, majority of the Count decisions upheld that this sort of dismissal was void.[22]

c) Case Law Prohibition of Dismissals

Under the lack of statutory provision requiring the employer to show reasonable or just causes for dismissals, Japanese case law has developed of its own legal theories restricting the employer to dismiss his employees without reasonable or just causes. These doctrines are the prohibition of the employer's abuse of his dismissal and the requirement of the just cause for employer's dismissals, two of which are quite often used by the Court in mixture. For example, Supreme Count stated, "employer's exercise of dismissal right in abuse is void if the dismissal lacks of an objectively reasonable reason and it is a sort of dismissal that will not be accepted as a resonable one under the common sense."[23]

In practice, dismissals are closely scrutinized by the Courts which require employers to show just or reasonable causes for dismissals when the company rules or collective bargaining agreements specifically itemize the acceptable reasons for dismissals, then employers generally cannot dismiss their employees for reasons other than those stated. The Courts generally examine disposal cases to determine if the itemized dimissal clauses in the rules or agreenments have been correctly interpreted and applied to those cases. If not, the Courts

verdict that those dismissals may be invalidated for misinterpreting or misapplying these rules or collective bargaining agreements.[24] Reasons commonly given in these rules or agreements are; 1) unsuitability for work because mental or physical defect, 2) lack of sincerity, and skill and efficiency, 3) gross negligence on the job, 4) felony convicted, 5) lengthy absence without notice to his employer.[25]

d) Advance Notice to Dismissals

The period of advance notice to dismissals was extended to thirty days from fourteen days by the Labor Standard Act (Art. 19 I)

A contested legal issue was whether the employer's prompt notice to his employee without expiration of thirty day advance notice nor payment of equivalent to the thirty day period. Supreme Court decided that dismissal itself was effective, after the prescribed payment equivalent to it would be paid to the worker.[26]

e) Prompt Dismissal with Unavoidable Causes

The Labor Standard Act introduced a new administrative procedure requiring the employer to report the Local Labor Standard Inspection Office unavoidable causes and to be approved (Art. 20 II).

The unavoidable causes provided under the Labor Standard Act are almost the same as those under the Factory Act Regulation. However, governmental and court's interpretation about them have developed. For example, the business difficulty due to a natural calamity is an accident such as fire buring out the factory, or suddenly happened permanent power suspention.[27] Worker's failures causing his dismissal are such as his failing or false report on his own resume, and refusal to remove order.

The contested legal issue was whether the dismissal would be effective even if the employer had not reported and had not been approved his dismsssal by the Local Labor Standard Inspection Office. Supreme Court decided that this sort of an employer's procedural failure did not nullify the dismissal because it had a simply private law effect.[28]

f) Summation

Under the present legal system, dismissals are controlled by company or work rules and collective bargaining agreements concerned directly, while they are regulated by Constitution, Civil Code, Trade Union Act and Labor Standard Act indirectly. All of them are guaranteeing the employer's right to dismiss his employees as a basic rule, however, all of them are anticipating the restriction on it by either

prohibiting certain type of illegal dismissals, or requiring certain period of advance notice, or limiting the definition of unavoidable causes for prompt dismissals. These restrictions on the employer's right to dismiss his employees have developed time to time as the history shows.

1. Emperor's Decree No. 156 (May 5, 1915).
2. OSAKA CITY AUTHORITY, RESEARCH ON CONTRACTS OF EMPLOYMENT IN FACTORY, 1921.
3. Emperor's Decree No. 153 (June 5, 1925).
4. Emperor's Decree No. 89 (April 27, 1896).
5. 24 MIN. ROKV. 2322 (S. Ct., December 14, 1912); 1 MIN. REI. SHŪ. 259 (S. Ct. May 29, 1911).
6. HIDEO HATOYAMA, ZENTEI SAIKEN HŌ 100, (1920).
7. TAKASHI KIKUCHI, *Rodo Keiyakuho (5)*, 356 RŌ HAN. 5. (1981).
8. OSAKA CITY AUTHORITY, *supra* note 2.
9. 1 MIN. REI. SHŪ. 259 (S. Ct., May 29, 1911).
10. 21 MIN. ROKU. 1718 (S. Ct., October 18, 1918).
11. HATOYAMA, *supra* note 6.
12. 1 MIN. REI. SHŪ. 259 (S. Ct., May 29, 1921).
13. GANTARŌ SUEHIRO, HANREI MINJI HŌ 100, (1921).
14. Pub. L. No. 97 (April 7, 1947).
15. THE ECONOMIST 5, (August 19, 1978,) : K. YAKABE, LABOR RELATIONS IN JAPAN; FUNDAMENTAL CHARACTERISTICS 15-16, (1977); BUSINESS WEEK 44, January 30, 1975.
16. Ōno, *The Structure of Japanese Industrial Relations: An Interpretation,* 75 JAPAN LAB. BULL. 8, 1971.
17. C. NAKANE, JAPANESE SOCIETY 18, 1970.
18. 28-5 SAIHAN MIN. SHŪ. 927 (S. Ct., July 22, 1974).
19. Const. of November 3, 1946.
20. Pub. L., No. 51 (December 22, 1947).
21. 22-4 MIN. SHŪ. 845 (S. Ct., April 9, 1968).
22. 5-2 RŌ. MIN. SHŪ. (Osako Ct. of App., Feb. 20, 1954).
23. 227 RŌ. HAN. 32 (S. Ct., April 25, 1975).
24. T. Ariizumi, The Legal Framework: Post and Present, K. ŌKŌCHI, B. KARSH AND S. LEVINE ed., 1973 WORKERS AND EMPLOYERS IN JAPAN 124.
25. TRADE BULLETIN CORPORATION, RULES OF EMPLOYMENT (BOOK ONE) 40-41, (1974).
26. 143 MIN. SHŪ. 403 (S. Ct., March 11, 1970).
27. Dep. of Lab., Ki. Hatsu. No. 111 (March 1, 1956).
28. 98 KEI. SHŪ. 1847 (S. Ct., September 28, 1954).

II. NEGLIGENCE IN EMPLOYMENT CONTRACTS UNDER JAPANESE LAW: CAREER FRAUD

1. LEGAL STATUTORY FRAMEWORK

Concerning negligence which occurs in employment contracts, both employers and employees have recourse to some provisions in the Japanese Civil Code, such as fraud, tort, and fulfilment of obligation.[1] Under this Code unacceptable negligence in an employment contract may void it, or cancel it. The Labor Standard Act also provides for the legal effect of the labor contract and equal treatment of employees.[2] In the case of employee's negligence in an employment contract, they may void it, or cancel it with resultant dismissal of the employee or upholding of damage claims. Unacceptable negligence on the part of the employer involving violation of the Labor Standard Act void the contract, but in addition, the Court would rule that the content of the employment contract be revised so as to conform with the stipulations on labor standards contained in the Act, and that the contract between the employer and the employee be renewed accordingly.

In this article the discussion will be focussed upon negligence on the part of the prospective employee at the time agreement upon an employment contract, involving failure to disclose to his prospective employer true details of his education, work experience or criminal record, and their legal results as seen in court cases in Japan.

2. CASE LAW

A) General Remaks

Under the Japanese case law ruled by the courts, an employer has the right to investigate prospective employee's (1) educational career or final grades at the highest educational institution he attended, (2) job skill or working capacity, (3) health conditions or health records, and (4) any other factors necessary for the employer to decide his recruitment or appointment, and to decide upon the particular position he shall be assigned to in the company hierarchy and organization. All prospective employees are required to write these facts accurately and truly in a job

application form, or to tell them to their prospective employer at the time of the job interview.[3] The justification for this is explained by the following case. It was ruled that an employee's action to cheat his employer contitutes a breach of the "faith rule" or Shingi Seijitsu in Japanese, which requires any employee to behave faithfully towards his employer. In this case, the Court ruled that the employer could investigate an employee's (1) personality or character, (2) creed or political sympathies, and any other aspects held to affect the evaluation of the whole personality or Zenjinkaku in Japanese, as well as his skill and health.[4]

The interesting feature in the Japanese Court ruling is that most cases concerning educational careers and work experience do not differentiate between Wahrheitpflicht and Offenbarungspflicht in German. However, Wahrheitpflicht is clearly defined in the cases concerning criminal records. The court said that the employer requires to be informed of the above factors in order to be able to evaluate the employee's working ability. For this reason, an employee is obliged to write the true facts in his curriculum vitae when required to do so by the employer. This is a duty based on the "faith rule" under the employment contract.[5] The other Japanese feature is that few cases claiming damages caused by false statements on the part of an employee about himself at the time of the formation of an employment contract have been brought before the courts. In most of the cases employees who made false statements about their careers have been discharged in direct disciplinary action by the employer. Even about ten years interval of time did not mitigate an employee's false statement about his educational career. The high court supported this employer's disciplinary action to discharge the employee on the grounds that (1) he broke the "faith rule" required in the process of forming the employment contract, (2) the employer could not judge his pernonality as a whole at the time of agreeing the employment contract, and (3) such a false statement involved the possibility of causing damages to the employer.[6]

It is important to note that, in comparison with other countries, Japanese employers usaully demand their employees to be loyal to them under the limited lifetime employment custom, which guarantees automatic scaled pay rises according to length of service.

B) Educational Career

An employee who wrote a false statement about his educational

career intentionally in his curriculum vitae is reasonably discharged and may be obliged to compensate for the damages caused by his false statement. His employment contract is rendered void on the grounds that his false statement violates the "faith rule". This is an almost universal ruling by Japanese courts.[7] The courts even upheld the case against an employee who lied about his educational career at high school, even though he had gone on to graduate from university.[8] In this case no damages were brought, but disturbance of the company's order was upheld. In other words, his false statement violated a working rule and then broke the relationship of trust between him and his employer. Therefore, he was disciplined by the severest measure: expulsion from his company. Generally speaking, a damages claim is not supported by the courts unless real damages were caused to the employer by an employee's false statement about his educational career.[9]

C) Work Experience

Under the Japanese case law, information about work experience or employment history is also required to be told truthfully to an employer by his prospective employee during the process leading to agreement of an employment contract. An employee's false statement breaches his duty to be sincere to his employer under the employment contract. And in some cases, it will cause damages to the employer because he will misjudge the employee's ability or capacity to do his job and misplace the employee in his company's organization.[10] In a case involving inaccurate information given about a prospective employee's school career, the court does not differentiate between a minor falsehood and a major one, when it supports an employer's action of dismissing an employee. But when it is a matter of misrepresentation of facts concerning employment history, the court requires an employer to be able to prove that the deception was significant enough to cause the employer to misevaluate the employee's working ability, if it is to uphold the employer's action in discharging him. For example, a taxi driver who did not tell his new employer about his past work experience as a taxi driver hired by another employer should not be regarded as having made a false statement significant enough to merit dismissal.[11]

D) Criminal Record

False statement concerning an employee's criminal record does not necessarily constitute a breach of the "faith rule". This depends upon

the nature of the particular job offerred. Therefore, the court ruled that, in the case of a blue collar worker, a past prison sentence was not a fact essential for an employer trying to judge his personality and his capacity to keep the harmonious working order as well as his ability to fulfil his duties. The employer's disciplinary action against him was not sustained by the court.[12] Also the court did not support an employer's disciplinary action discharging an employee who did not tell his employer the fact that he was in the process of facing criminal charge in court. The court ruled that there was a possibility of him not being found guilty at the end of the court procedure, so that the employee had no duty to reveal these facts.[13] A past criminal record which had already been erased by the elapse of the years was also judged not to be information which a prospective employee is obliged to reveal to his employer.[14] This case is interesting because the employer in this case was a private guard or security company.

E) Political Beliefs

The Supreme Court ruled that an employer has the freedom to select applicants as part of his freedom to engage in business which is guaranteed under the Constitution Art. 22 and 29 Therefore, according to this decision, an employer has the right to refuse to hire or refuse to continue to hire an employee just after the termination of training period. For this purose, the employer has the right to investigate a job applicants' or his employees' political sympathies. The court further decided that the employer's refusal to continue to hire an employee because of his political sympathies discovered by an employer's investigation subsequent to the employees recruitment did not violate the equal protection clause provided under the Constitution Art. 14, nor violate public policy provided under Civil Code Art. 90, nor the equal treatment in employment clause under Labor Standard Act Art. 3.[15] In this case, an employee concealed his high position in the student co-operative.

3. COMMENTS

A) An employment contract is only a contract concerning work. Therefore an employee should not be forced to tell his employer about his private affairs, nor his own personality as a whole. Recently many labor law professors have argued on this point that an employee's false statement about his career may cause a disciplinary discharge only

when it is related to his working ability, which affects his employer.[16] Or, in stead of a disciplinary discharge, a reasonable discharge which guarantees retirement allowances is proposed.[17] With the same conclusion, a few labor law professors refer to making void or cancellation of the employment contract on the ground that a false statement prior to forming a cotract involves a fraud on an employee's part under Civil Code Art. 96.[18]

B) It should be noted that Japanese society is characterized as "educational-career-oriented" (Gakureki-Shakai) which means that average employers decide to hire employees by mainly considering their educational career, and they select them according to the names of the universities they graduated from. Graduates from universities can earn much more money than school graduates. The characteristics of the Japanese labor market is that employers mostly take on employees in April when universities and schools release their new graduates. Graduates are introduced to employers by universities or school offices. Therefore most of them cannot make false statements about their careers at the time of agreeing the employment cotract. Therefore most legal cases have been brought to employers who hired "half way" employees who had already had work experiences under other employers. Inaccurate information about educational careers has been treated as the important kind under our educational-career-oriented society. But such misinformation should not be regarded as so important as to permit employers to discharge employees unless it directly misrepresents their work ability, or gives them unfair advantage on pay scales determined according to educationaal career.

C) Japanese companies have usually adopted the limited lifetime employment custom which means that an employer may not dismiss an employee until his retirement age, usually from fifty-five to sixty years old except in cases of breach of contract or financial difficulties in the company to the extent of justifiable discharge. Japanese companies have also usually adopted the automatic pay increase system which means that pay, salary or wages will increase annually automatically. The rate of pay increase itself will be negotiated between unions and employers. Therefore, in Japan, the employment contract does not correspond to the amount of work which an employee can provide to his employer by fulfillment of his working duty. Trifle false statements about work experience should not be regarded as sufficient reasons to discharge an employee.

D) Japanese society is characterized as a village type society. The result of this is that harmonious human relationships in companies are so important that not only "half-way" employees but also employees with criminal record may possilby not be treated as the equals of employees who were employed just after university or school graduation. However, an employee should not be discriminated against because of his criminal record to the extent of being discharged, unless it is related to his job performance. Any employee has the right not to reveal unpleasant private information, for example, a criminal record, which may induce his employer to refuse to hire or discharge him.

E) Japanese society tolerated left-wing political sympathies in the political world to some extent. But there is strong tendency among companies to refuse to hire employees who have left-wing political sympathies. It cannot be justified that an employee who has certain political sympathies. Whether such political sympathies can be proved concretely to affect his job performance to disturb the company's order, or to damage the company's image is the key for judging whether he may reasonably be discharged or not.

1. Civil Code, §96, §415 and §905.
2. Labor Standard Act, §3 and §13.
3. *Nippon Uni Car case*, Yokohama D. Ct., Kawasaki Bran. (Feb. 10, 1975), 223 RŌ. HAN. 64.
4. *Kansai Paint case*, Tokyo D. Ct. (Oct. 22, 1955), 6-2 RŌ. MIN. 164.
5. Op. cit.
6. *Kōbe Steal case*, Osaka H. Ct. (Aug. 29, 1957), 8-4 RŌ. MIN. 413.
7. Op. cit.
8. *Asahi Glass case*, Yokohama D. Ct., Kawasaki Bran. (Mar. 23, 1970), 607 HAN. JI. 87. Disharge was ruled void, *Sanai Sagyo case*, Nagoya H. Ct. (Dec. 4, 1980), 365 RŌ. HAN. Card 36.
9. *Nishi Nihon Aluminium Industry case*, Nagasaki D. Ct. (Jul. 11, 1975), 232 RŌ. HAN. 52.
10. *Sakamoto School case*, Kagoshima D.Ct. (May 14, 1973), 715 HAN. JI. 106.
11. *Dai Tokyo Taxi case*, Tokyo D. Ct. (Oct. 31, 1958), 9-5 RŌ. MIN. 661.
12. *Fuji Heavy Industry case*, Osaka D. Ct. (Apr. 8, 1960), 11-2 RŌ. MIN. 323.
13. *Nippon Agriculture case*, Saga D. Ct. (July 20, 1976), 260 RŌ. HAN. 32.
14. *Nishi Nihon Guard case*, Fukuoka D. Ct. (Aug. 1, 1974), 208 RŌ. HAN. 31.
15. *Mitsubishi Resin case*, S. Ct. (Dec. 12, 1963), 27-11 MIN. SHŪ. 1536.
16. HEIJI NOMURA, RŌDŌHŌ KŌWA 369; Fujio, *Keirekisashō To Saibanrei No Keikō*, 65 TŌRON RŌDŌ HŌ 20; TŌRU ARIIZUMI, RŌDŌKIJUNHŌ 222.

17. INEJIRO NUMATA, RŌDŌHŌRON 297; TERUHISA ISHII, RŌDŌKYŌ-YAKU TO SHŪGYŌKISOKU 26.
18. Tadashi Hanami, *Chōkaiken No Hōtekigenkai*, 9 RŌDŌHŌ 4; NOBORU KATAOKA, DANKETSU TO RŌDŌKEIYAKU NO KENKYŪ 301; Kiyoshi Gotō, *Rōdōkeiyaku No Seiritsu*, 5 RŌDŌHŌ TAIKEI 9.