

Case 25/2008 – Municipality discriminated on the basis of pregnancy and maternity leave when employing a kindergarten manager.

A woman felt that she was discriminated against because she was pregnant and was to take maternity leave. The case concerned employment as leader for a municipal kindergarten.

The Tribunal emphasised that the prohibition against pregnancy discrimination concerns the entire employment process, not only the final choice of who is to be employed.

The municipal knew that the Claimant was pregnant before employment. Further, the Claimant had considerably longer relevant work experience than the woman who was employed. The Tribunal therefore evaluated the Claimant as better qualified for the position based on an evaluation of education and relevant work experience.

Further, the Tribunal referred to the fact that the Municipality had omitted to obtain an oral reference for the Claimant. No references were obtained for others than the person who was employed. Omission to obtain references could indicate that the Claimant was excluded from further consideration because of pregnancy.

There were therefore circumstances present which gave reason to believe weight had been attached to pregnancy and maternity leave in connection with employment. The burden of proof according to Section 16 of the Gender Equality Act therefore rests with the Municipality.

There was no record of what was said during the interview or a simultaneous summary of the Municipality's impression of personal suitability after the interview. Neither had the Municipality presented any record of what was said concerning the reference of the person who was employed. There was no other written documentation from the employment procedure to support the Municipality's justification.

The Municipality failed in its burden of proof. The Municipality therefore acted contrary to Section 4, subsection two, cf. Section 3 of the Gender Equality Act.

The Tribunal's decision was unanimous.