

On the Application of Laws to the Dismissal of Chinese College Teachers

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Abstract

Currently, with its reasonability in applicable law basis, the dismissal of Chinese college students cannot be universally put into *Labor Contract Law of the People's Republic of China*. However, relevant laws and the effect relationship among them should be clarified. In the practical application process, some problems may arise in the application of these relevant laws. Accordingly, the professor committee should be introduced and enhanced in its role when dismissing teachers and different reasons for dismissal should be considered to make different dismissal decisions.

Keywords: College teachers, Dismissal, Application of laws

1. Introduction

It is clearly laid down in on the *Implementation of Further Deepening the Personnel Reform in Universities* that university and teachers should follow the principle of equality, sign the employment contract and clearly define parties' right, obligation and responsibility. This regulation signals the switch from a subordinate relationship to an equal one based on laws as well as initiates the reform of Chinese university teachers' employment system. In the employment reform, dismissal, a very important part, influences and even decides the success of the whole reform process to a large extent. It is shown in the law that the process of dismissal includes two-way dismissal. But due to the limited length of the article, only the dismissal of teachers by universities is focused on here. Under the requirements of managing state affairs and university affairs in accordance to laws, dismissal, which matters the interests of colleges and teachers, must comply with laws. However, many problems are still lying in the application of laws to the dismissal of Chinese college teachers, mainly including non-uniform law proofs, unclear effect relationship among laws, the subject and extent of dismissal and so on. We hope that our research on the above problems will benefit the perfection of the college teachers' dismissal system.

2. The Legal Grounds for the Dismissal of College Teachers in China

The laws related to the dismissal of Chinese college teachers include some basic laws issued by NPC such as *Teacher's Law* and *Higher Education Act* and relevant judicial explanations, regulations, local laws and universities' employment contracts. Therefore, it is necessary to clearly define the contents of these laws and the effect relationship among them.

According to Article 37 of *Teacher's Law of the People's Republic of China* issued in 1994, if teachers fall into one of the following situations, they will be given administrative penalties or dismissed by their universities, other educational institutions or education administrative departments: causing damages by intentionally failing to accomplish educational and teaching tasks; giving physical punishment to students and refusing to kick the habit; causing baneful influences due to misbehavior and insulting students. The above rules have not been amended up to now. *Teacher's Law* applies to all schools and teachers, including universities and their faculty. Obviously, the dismissal of teachers laid down in the law follows the following characteristics: first, logically, it can be understood that only when a teacher complies with the three situations and the circumstances are serious can they be dismissed; second, the relevant regulations are to be further explained and the standard for serious circumstances should be mastered strictly in practice; third, the above situations cannot cover all the reasons for the dismissal of teachers in educational practice.

In *Higher Education Act of the People's Republic of China* issued in 1998, there are only two articles related to the

dismissal of teachers: first, Item 4 of Article 41 lays down the principal's right of dismissing teachers as well as some relevant matters related to the management of such affairs by universities, the principle office or the university governing board; second, according to Article 51, universities should assess the ideological and political performance, professional ethics, professional skill and practical work performance of teachers, managers, teaching assistants and other professionals in order to provide a proof for employing, dismissing, promoting, praising or punishing individuals. Although it establishes the result of assessment as one of the important evidences for dismissing teachers, this rule is just a principle provision instead of a directly operable guidance.

In *Labor Law of the People's Republic of China* issued in 1994, two articles are mentioned which directly involve the employment unit's right to dismiss their staff: first, in accordance with Article 25, if laborers comply with one of the following circumstances, their employment units have the right to terminate their labor contracts: failing to conform to the employment requirements during the trial period; seriously violating labor disciplines or the regulations of the employment unit; causing serious damages due to negligence of duty or malpractice; being subject to criminal liability. Second, Article 26 lays down that in one of the following circumstances, the employment unit has the right to terminate labor contracts under the premises that a written notice should be given to the laborer 30 days in advance: failing to work on the previous position and on the new position arranged for by the working unit due to illnesses or injuries unrelated to the workplace; failing to be qualified for the job even after training or the change in positions; failing to go on with the labor contract due to significant changes in the objective circumstances based on which the contract was originally established and failing to sign a new one after the negotiation of the involved parties. In *Labor Contract Law of the People's Republic of China* issued in 2007, the above regulations are remained with some added information to former Article 25 that laborers can be dismissed if they cause serious influences on the tasks given by their working units by establishing labor relationship with other employment units or they refuse to correct their mistakes with the notice given by employment units and form a part of Article 39.

Other relevant personnel laws, regulations and policy provisions include: first, in *On the Implementation of Trial Personnel Employment System in Public Institutions* issued in 2002 by former State Personnel Bureau, with the agreement reached by the employment unit and the involved employee, relevant employment contract can be terminated. In addition, if an employee falls into one of the following circumstances, the employment unit can terminate the employment contract at any time: being absent from work for more than 10 successive working days or more than 20 accumulated working days within a year; going abroad or not coming back on time without the permission of the employment unit; violating work rules or operation procedures and causing human element accidents or neglecting duty and leading to serious results; seriously disturbing work order and leading to failure in the employment unit and other units' smooth activities; receiving criminal punishment more than fixed-term imprisonment or undergoing reeducation through labor. For those who are unqualified for their positions and refuse to be transferred to other positions during the trial period, the employment unit has the right to terminate the employment contract at any time. Meanwhile, any one of the following circumstances also gives employment units the right to terminate the employment of an employee with a written notice 30 days in advance: failing to work on the previous position and on the new position arranged for by the working unit due to illnesses or injuries unrelated to the workplace; having an unqualified assessment result at the end of a year or an employment period and refusing to be transferred to other positions, or being assessed unqualified again on the new position.

The above rules comprise the law and regulation system for the dismissal of college teachers in China nowadays, providing basic evidences for the dismissal system in universities. However, many problems still exist in people's understanding and the application of these regulations as well as the relations between other laws and them.

3. Problems in the Application of Laws to the Dismissal of College Teachers

Many problems still lie in the current practice related to the dismissal of college teachers, such as the effect relationship among laws, the problems in the laws and regulations related to universities' employment contracts as well as to the subject, levels and reasons of the dismissal.

3.1 The Effect Relationship among Laws

The confirmation of the effect relationship among the laws related to the dismissal of college teachers is actually determined by defining the value orientation of the college teacher dismissal system. On one hand, the current rules for law application can be followed if this system is oriented to guarantee personnel management and fully and effectively exert dismissal rights since *Labor Contract Law* and other laws, regulations or other provisions issued by the State Council have a complementary relationship instead of a predominant one. As a result, a variety of reasons to dismiss college teachers form a web. On the other hand, if it is intended to restrict universities' power of dismissing their teachers and reducing relevant disputes, the dismissal issue should be completely covered by *Labor Contract Law*, excluding other laws and regulations. We hold that the first value orientation should be clung to in Chinese universities

with the following reasons. First, due to complex personnel institution in universities and obvious differences in management pattern and personnel composition from enterprises, the employment contract is not completely the same as the labor contract and therefore *Labor Contract Law* cannot be simply adjusted to conform to the real practice. This forms the basic grounds for current judicial practice bureau. Second, some special circumstances in higher education cannot be covered by *Labor Contract Law*. For instance, the behavior of college teachers is a significant standard to decide whether they are fit for further educational practice, which is also one of the necessary reasons to dismiss college teachers. However, due to the difficulty in adjusting the current labor contract law, *Teacher's Law* should be relied on as well to deal with relevant issues. Third, if *Teacher's Law*, *Higher Education Act* and other relevant personnel provisions are combined into adjusted *Labor Contract Law* through judicial explanations, the self-discretion of universities in dismissing teachers will be enhanced greatly, doing harm to the normalization and universality of the dismissal practice.

On the premises of admitting and following current law application rules, the following principles should be stuck to as to the effect relationship among laws and regulations applicable to dismissing college teachers. First, when labor or employment contracts are involved, compared with *Labor Law*, *Labor Contract Law* should be preferably applicable and be given priority to as a new and special law. Second, other laws, regulations or provisions issued by the State Council should be preferably applicable, including *Labor Law* applied to those issues excluded in *Labor Contract Law*; third, among the laws and regulations prior to *Labor Contract Law*, relevant special provisions issued by the State Council should come first, followed by *Higher Education Act*, *Teacher's Law* and *Labor Law*; fourth, with the conflict between local regulations, employment contracts made by universities or relevant rules and upper-level laws, the latter should be based on first of all.

3.2 Problems in the Implementation of Relevant Laws and Regulations on Dismissing Teachers in Universities

Ever since the employment system reform, Chinese universities have sped up their reform process according to relevant laws and regulations in which the most central part is the establishment of employment contracts or corresponding regulations. This has greatly promoted the issue of dismissing college teachers in a legal way. However, some serious problems are still lying in many universities' employment contracts or relevant regulations.

First, although Chinese universities rely on the above mentioned laws and regulations to establish their employment contracts or regulations, many of them do not give a clear definition of this fact. For instance, in *Tongji University's Regulation of Employment Contract System*, it is clearly defined that its regulation is based on *Higher Education Act of the People's Republic of China*, *Teacher's Law of the People's Republic of China*, *On the Implementation of Trial Personnel Employment System in Public Institutions*, *Shanghai's Regulation of the Employment Contract in Public Institutions* and relevant laws, regulations, rules and policies with reference to *Labor Contract Law of the People's Republic of China*. But in other universities such as Beijing University, Fudan University, Sun Yat-sen University, there is no similar regulation.

Second, some sections about dismissal in employment contracts or regulations go beyond the existing laws. For example, in Beijing University and Fudan University, the dismissal case caused by employees' forgery is included as a complement to current personnel law system and other relevant law system.

Third, some sections in some universities' regulations directly break the limit of current laws. For example, "reeducating through labor" mentioned in many universities' regulations are not included in "criminal liability" listed in laws. A university lays down the rule that it has the right to dismiss a teacher at any time if he is absent from work for more than 15 accumulated days, which is inconsistent with "being absent from work for more than 10 successive working days or 20 accumulated days within a year" listed in current laws.

Fourth, some universities' employment contracts or regulations have great randomness, leaving space for explanation and giving potential problems for future disputes. For example, in a university's employment contract, reasons for dismissal are listed as follows: failing to follow the contract and accomplish tasks or having a qualified result in the assessment; damaging the working unit's benefit, leading to serious results and severely violating professional ethics, hence causing negative influences to the working unit; causing human element accidents due to violation of work regulations or operation procedures and leading to serious economic damages; seriously influencing work and social orders due to unreasonable quarreling and violent fights; being absent from work for more than 15 days in a year; being given criminal sanctions; being proved by relevant institution to be unqualified for the previous position after the expiry of the treatment period due to illnesses or injuries unrelated to the workplace and refusing to be transferred; Faking grades, diploma, health certificate or cheating the working unit in other illegal ways.

3.3 The Problem Related to the Subject of Dismissal

As is mentioned above, Item 4 of Article 41 in *Higher Education Act of the People's Republic of China* issued in 1998 defines the principal's right of dismissing teachers and relevant issues when universities, the principle office or the

university governing board deal with the above regulations. In practice, such an item should be explained in the way that a teacher's dismissal should be approved of by the principle office or the university governing board first and then be conducted by the principal on behalf of the university, which is a universal practice in Chinese public universities. As for it, some scholars express their disagreement that universities are given excessive administrative power and weakened academic power as well as emphasize that academic research should be separate from administration. In their opinion, the professor committee should be established, without whose approval the principal has no right to appoint or dismiss any teacher. Administrative managers only have the right to dismiss administrative staff instead of professors. The charger of departments and the academic leader of an academic field should be appointed or dismissed by the professor committee. Since it is an inevitable trend to make universities de-administrative in the future reform, the professor committee should be introduced into the teacher dismissal process step by step in order to enhance the understanding and judgment of teachers and make dismissal decisions more reasonable and scientific.

3.4 The Problem Related to the Levels of Dismissal

Against the background of the employment reform, two parallel contracts exist between universities and teachers, that is, the labor employment contract centered on personnel relationship and the position employment contract centered on position. The labor employment contract establishes the labor personnel relationship between teachers and universities which is the most fundamental while the position employment contract is a further one signed on the basis of the labor employment contract in accordance with universities' requirements for teachers in teaching, research and management as well as teachers' reality, which defines teachers' expected tasks in teaching, research and management in an employment period. Therefore, in the institutional design and practical operation of dismissing college teachers, the levels of dismissal should be clarified, that is, on which level a teacher is dismissed. Accordingly, the severity of violating actions can be relied on to fit into different levels of dismissal: degradation, dismissal from the teaching and research position (with the qualification for other positions remained), dismissal from full-time work (with the personnel relationship remained) and complete dismissal from the personnel relationship. Universities differ in their practice. Some universities dismiss teachers' personnel relationship with the school once their actions comply with the reasons for dismissal; some others differentiate various levels of dismissal, such as China Youth University for Political Sciences which dismiss a teacher named Zhizhu Yang from his teaching position due to his violation of the one-child policy with his personnel relationship remained. Such inconsistency in practice is not favorable for the normalized and reasonable development of teachers' dismissal.

It is believed in this article that a general dismissal of teachers' personnel relationship is unreasonable considering different severity in violating laws and regulations. It is recommended that different levels and types of dismissal should be differentiated in institutional design or details of dismissal should be explained and strictly conducted in practice with the current simple regulations remained.

4. Conclusion

We believe that there are two value orientations related to the application of laws to the dismissal of college teachers in China: being university-oriented to ensure the personnel right in dismissing unqualified teachers; being teacher-oriented to restrict the abuse of universities' power and to protect teachers' legal rights. These two values are paid attention to and pursued in the teacher dismissal system, the balance of which is expected to be achieved by universities. As long as the dismissal system can be legally and reasonably designed and relevant laws can be strictly applied, both universities' personnel rights and teachers' legal benefits can be ensured.

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