

Several Thoughts on the Protection of the Legitimate Rights and Interests of College Teachers under the Appointment System

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Abstract: This paper focuses on the protection of the legitimate rights and interests of university teachers under the appointment system. By analyzing the existing issues in the protection of the legitimate rights and interests of university teachers under the appointment system, several considerations regarding the protection of the legitimate rights and interests of university teachers are proposed. Currently, there are problems such as insufficient attention to the protection of university teachers' rights in China, slow updates of laws, and insufficient coordination among relevant parties. There are shortcomings in the protection of university teachers' rights by universities, educational administrative authorities, social organizations, and judicial organs. Drawing lessons from advanced practices in other countries and regions, this article proposes several suggestions based on the current situation in China, focusing on the legal relationship between universities and teachers, legal status, position allocation, teacher initiative, and teacher appointment procedures. These suggestions aim to explore feasible solutions for improving the system of protecting the rights and interests of university teachers under the appointment system while maximizing the protection of teachers' rights.

Keywords: Efficient Teachers, Appointment System, Lawful Rights and Interests, Rights Protection.

1. Introduction

Higher education is a core driving force for sustained and healthy development in a country, and countries around the world attach great importance to higher education. Therefore, the reform of various legal systems for university teachers is gradually deepening [1]. The protection of the rights and interests of university teachers is attracting increasing attention from scholars and society as a whole. University teachers occupy a disadvantaged position in various legal relationships within schools and are the target members of the teacher rights protection system. Nowadays, China's education legal system is continuously improving, and the country is rapidly entering an era of governing universities and education according to law [2]. Consequently, the legal relationship and status between university teachers and higher education institutions are undergoing profound changes. Combining the current teacher appointment system and relevant laws and regulations in China, this article puts forward some immature opinions and reflections on the protection of the legitimate rights and interests of university teachers under the appointment system.

2. The Problems in Protecting the Legitimate Rights and Interests of University Teachers under the Appointment System

2.1. Historical Development and Institutional Analysis of Appointment System

The university teacher appointment system is a teacher management system established by the state in the form of law. It is a system whereby universities and teachers confirm

the teacher's position, duties, and the rights and obligations of both parties through contracts based on equal voluntary principles. The "Teachers Law" of 1993 first stipulated in the form of law that "schools and other educational institutions should gradually implement a teacher appointment system." The "Education Law" of 1995 stipulated in the form of a basic law that "the state implements a teacher qualification, position, and appointment system, improves teacher quality through assessment, rewards, training, and training, and strengthens the construction of the teacher team." The "Higher Education Law" promulgated in 1998 stipulates in Article 48: "Higher education institutions implement a teacher appointment system." Thus, the university teacher appointment system has entered the track of the rule of law [3].

The post employment system refers to a personnel system in which units and employees determine their working relationship through the signing of employment contracts based on the principles of equality, voluntariness, and mutual agreement, in accordance with relevant national laws and policies. Its basic features include scientific job design, equal competition, full employment, strict assessment, and contract management. Its purpose is to regulate the behavior of both the unit and the individual based on the contract, and safeguard the legal rights and interests of both parties. The implementation of the post employment system in universities is an important measure to implement the national strategy of governing the country according to law, further deepen the reform of the university personnel system, reasonably allocate university human resources, optimize the structure of the teaching staff, and comprehensively improve the quality and efficiency of running schools [4].

2.2. Problems in Appointment

At the legislative level, there is no clear positioning of the

legal status of teachers, and the implementation process of university teacher appointment is not standardized enough. The law does not clearly specify the legal status of university teachers and the legal relationship between them and the school. Only by clearly defining the legal status of university teachers can we further clarify the legal relationship between teachers and universities, determine the nature of the teacher appointment contracts signed by the two parties, and make clear provisions on the remedies available after disputes between universities and teachers. Therefore, clarifying the legal status of teachers should be and must be the most core issue to be addressed in China's teacher law. On the one hand, the positioning of teacher legal status should be based on feasibility and China's national conditions; otherwise, no matter how perfect the design of the scheme is, it will be meaningless. On the other hand, we should make full use of existing legal resources. If we abandon existing legal resources and design a new system, it will not only waste existing resources but also make the newly designed system lack a foundation and difficult to implement [5]. Article 17, paragraph 2 of the "Teachers Law" stipulates: "The steps and methods for implementing the appointment system shall be formulated by the education administrative department of the State Council." This law only makes general provisions in the form of authorization. To date, the education administrative departments have not issued specific implementation rules and methods for the teacher appointment system. There are no procedural regulations for the source of teacher appointment systems in China, which inevitably leads to the phenomenon of "one school, one rule" in the implementation of the appointment system. Moreover, these "relevant regulations" often have considerable arbitrariness.

There are prominent contradictions between position setting and position structure. Firstly, there are no clear regulations on the establishment and cancellation of internal institutions in universities. In order to meet the needs of career development, many management institutions have been added to universities, some of which are temporary institutions, and most are at the department level, adding a considerable number of management personnel. Some of these temporary or semi-temporary institutions have no clear provisions on their establishment period and cancellation, resulting in a continuous increase in the number of management and auxiliary personnel. Secondly, there are no clear regulations on the establishment, scale, and establishment of second-level departments within universities. Some departments have only a dozen people, while others have tens or even hundreds of people [6]. Some departments have only one discipline major, while others have dozens of discipline majors. However, the number of management and teaching support personnel they are equipped with is almost the same. In many universities, especially key universities, the proportion of senior positions in professional and technical positions is very close to or even exceeds the national control target, and there is very little surplus of senior positions, and the promotion space for new teachers is very limited. In addition, in some traditional disciplines and departments, the proportion of senior positions in the teaching staff is very high, even exceeding 80%. According to the national policy, no more senior positions can be set up, but the academic achievements of newcomers are very good. However, the proportion of senior positions in some emerging disciplines, applied or special professional disciplines (such as computer, electronic information, art, sports, etc.) is

relatively low, but the academic ability of existing personnel is relatively low, making it difficult to promote. Similar structural contradictions have brought certain difficulties to position setting and management [7].

The current teacher appointment contracts are still not comprehensive and standardized enough. Although Article 2, paragraph 2 of the "Labor Contract Law" clearly states that: "State organs, institutions, social groups, and laborers who establish labor relations with them shall conclude, perform, change, rescind, or terminate labor contracts in accordance with this Law." This undoubtedly brings a glimmer of hope to teachers under the appointment system, as it implies that the "Labor Contract Law" applies to teacher appointment contracts. However, the "Labor Contract Law" does not provide a clear definition of "laborers," leading scholars to continue questioning whether teachers are indeed laborers and whether the "Labor Law" and the "Labor Contract Law" are applicable. The unclear identification of teachers' legal status inevitably makes it difficult to accurately find legal grounds to safeguard individuals' legitimate rights and interests after the infringement of teacher rights. The prevalent practice in universities is to implement a teacher duty position appointment agreement, which is signed annually and usually automatically renewed upon expiration. Due to the incomplete social security system in China, teachers have concerns when signing contracts with schools and can only sign on the appointment contract. In the implementation of the appointment system in universities, each university has formulated corresponding teacher appointment contract texts according to its own situation, leading to the problem of inconsistency in the appointment contract texts, making the contracts very flexible and leaving potential risks for universities to infringe on teachers' rights [8].

3. Reflections on Effective Ways to Safeguard the Rights and Interests of College Teachers

3.1. Clarify the Legal Relationship between Universities and Teachers, and Clarify the Legal Status of Teachers in Public Universities

According to the "Higher Education Law of the People's Republic of China," universities are independent legal persons with the right to appoint teachers. After the implementation of the appointment system, from the legal nature of the contract itself, both parties reach an agreement on equal terms through equal consultation. Whether from the subject, object, or content of the contract, from the perspective of the agreement between the two parties, it manifests as a kind of civil legal relationship with equal rights. From the nature of the subject of the appointment contract, one party to the contract is still an organization authorized by the state organ, representing the education administrative organ to exercise the power of appointment, rewards, and punishments to teachers and other staff, and issue academic credentials, so its power nature belongs to public power. Therefore, some scholars believe that under the implementation of the teacher appointment system, public universities and teachers are neither purely civil nor purely administrative but a combination of both.

In the current legal system of our country, teachers are

neither civil servants nor freelancers. As professional and technical personnel, teachers are not regulated by administrative legal relationships or civil legal relationships. This situation severely restricts the implementation of the appointment system. Therefore, the legal status of university teachers urgently needs to be confirmed through legislation. The positioning of the legal status of teachers should consider feasibility and China's national conditions, and fully utilize existing legal resources. Therefore, it is essential to clarify the legal status of public universities and teachers as soon as possible, which is the fundamental measure to solve various contradictions in the teacher appointment system. Only when the status of both parties is clarified can their rights and obligations be clarified accordingly.

3.2. Optimize Job Allocation and Demonstrate Value Concepts

By establishing a market-oriented human resource allocation mechanism, we can promote the rational mobility of university teachers, ensuring that academic resources are optimally allocated while pursuing profitability, ultimately achieving the goal of maximizing benefits for both the school and society at minimal cost. As bastions of humanity and intellectualism, universities require nurturing of the human spirit. The primary intention behind the reform of the university teacher appointment system is to improve the livelihood of teachers and stimulate their enthusiasm for work. However, if the reform solely adheres to market mechanisms, where competition and quantification reign supreme, it could lead to excessive competition among teachers, resulting in a drastic deterioration of interpersonal relationships and an unprecedented increase in teachers' survival pressure. Such a situation would contradict the original purpose of the appointment system reform and ultimately endanger it. Finally, there's the principle of "academic freedom," which is the lifeline of universities. Academic freedom, as an ancient academic management concept, is a fundamental principle that the university teacher appointment system must uphold. Upholding academic freedom entails maintaining the stability of the contractual relationship between universities and teachers. Academic freedom is closely related to the tenure system, which serves as a stronghold for academic freedom because it allows scholars to engage in academic exploration boldly without fear of interference or punishment. If the reform of the appointment system fails to uphold the principle of academic freedom, it could lead to the prevalence of mediocrity in universities, ultimately endangering the development of academic scholarship. Therefore, it is necessary and reasonable to provide scholars who have undergone rigorous academic selection, possess genuine academic potential, and are willing to dedicate themselves to academia with lifelong positions and long-term contracts [7].

3.3. Under the Guidance of Laws and Regulations, Improve and Perfect the Teacher Appointment Process

Under the guidance of fundamental principles, the signing of appointment contracts between universities and teachers should adhere to the principles of legality, voluntary equality, transparency, and integrity, standardizing the contract drafting process. The appointment procedure plays a critical role in determining whether a teacher can teach at a university. Currently, China lacks legal procedural regulations for the teacher appointment system. Therefore, it is imperative that

each university develop specific procedural standards for their teacher appointment system, both now and for the future. Initially, universities should establish a teacher evaluation and appointment committee. This body is responsible for drafting teacher appointment plans, assessment criteria, and disciplinary measures, which are then discussed and decided upon by the faculty (representative) assembly. Subsequently, the teacher appointment process should be made public. The principal, representing the university, should outline the qualifications and tasks required of the appointed teachers, as well as commit to their salary and benefits. Teachers, based on the university's requirements, should apply for the disciplines or positions they wish to be appointed to. The university then selects teachers based on their qualifications, performance, and the assessment of their virtues, abilities, diligence, and achievements. Finally, after the appointment committee or commission reviews and approves the selected candidates, the results are publicly posted for feedback. If there are no objections, the principal and the teacher will sign the appointment contract [9].

Teacher appointment contracts should be signed voluntarily and on an equal basis by both the universities and the teachers. In practice, universities are responsible for drafting appointment contract content in accordance with the law. Education authorities should review and record these contracts, ensuring that they include balanced rights and obligations, detailed provisions, and reasonable appointment periods. The content of the appointment contract serves as the fundamental and most important basis for both parties to fulfill their rights and obligations and to resolve disputes and conflicts. Additionally, it is suggested that China's teacher appointment system adopts both collective and individual contracts. "A collective contract signed between the teacher union or teacher representative council and the school to establish the general conditions and most basic rights and obligations for teacher employment; in addition to the collective contract, each teacher must also sign a separate individual contract, with each teacher and the school board making special rights and obligations agreements based on their own situation. Individual contracts are only valid for individual teachers" [10]. Of course, it is essential to ensure that both collective and individual teacher appointment contracts are adjusted promptly in content as societal development and teachers' personal abilities evolve. Theoretically, collective contracts reflect minimum requirements and basic standards for teacher appointments, while individual contracts better reflect individual values and needs and should not fall below the minimum requirements and basic standards of collective contracts. The simultaneous use of both types of contracts should comprehensively and favorably uphold teacher rights.

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