

Teacher Groups: Another Approach to Protecting Teacher Rights and Interests from the Perspective of Social Law

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Abstract

The dismissal of English teacher Liu Lingli from the Bowen College of Lanzhou Jiaotong University during her cancer period has sparked many thoughts on the rights and interests of teachers in private universities. Private university teachers enjoy a similar legal status as public university teachers in law, but in fact, they are far from it due to differences in legal and ownership systems. To better safeguard the legitimate rights and interests of teachers in private universities, we should start from the perspective of social law and form a social team composed of private and public institutions to maintain the status of teachers.

Keywords: private universities, teacher rights and interests, social law, teacher groups

1. Difficulties in the Legal Status of Teachers in Different Jurisdictions

In 2016, the Bowen College of Lanzhou Jiaotong University terminated its labor relationship with Liu Lingli and made the decision to dismiss Comrade Liu Lingli due to his English teacher Liu Lingli's cancer. During this period, Comrade Liu Lingli followed the procedure of requesting leave from the college. However, when the college leaders learned that Comrade Liu Lingli was suffering from cancer, the Bowen College of Lanzhou Jiaotong University made a decision to dismiss Comrade Liu Lingli and another employee who was also suffering from the disease. And during this process, the Bowen College of Lanzhou Jiaotong University did not respond to the judgments of the Yuzhong

County People's Court and the Lanzhou Intermediate People's Court regarding his defeat, which resulted in many issues such as social security and medical insurance of Comrade Liu Lingli not being properly resolved. In the end, Comrade Liu Lingli unfortunately passed away due to missing the best treatment time. The question that arises from this is, who should protect the rights and interests of private teachers in similar cases like Comrade Liu Lingli's? What is the difference in legal status between private school teachers and public school teachers? During the process of literature review, we found that the paradox lies in Article 29 of Chapter 4 of the Law on the Promotion of Private Education, which stipulates:

"Teachers and learners in private schools have

the same legal status as those in public schools.”

However, in the aforementioned case, it is evident that Comrade Liu Lingli, as a teacher in a private university, not only lacks the stability and welfare benefits of public school teachers, but even the labor contract he signed with the Bowen College of Lanzhou Jiaotong University within the scope of the Labor Contract Law has not been effectively executed by Lanzhou Jiaotong University.

It is obvious that the rights and interests issues faced by private school teachers are not the same as those faced by public school teachers. When private school teachers face difficulties in protecting their rights and interests as workers in a reasonable and effective manner, public school teachers face the problem of difficulty in clarifying their legal identity under the modern personnel system changes in public schools. Taking public higher education institutions as an example, their transition from public office to contract status puts the identity of teachers in a vague position. The discussion on the identity of public school teachers focuses on whether the key to the legal status of public school teachers lies in whether they are civil servants or laborers. If teachers are fully included in market regulation, it cannot solve problems such as fair allocation of teacher resources. “Market failure” requires government intervention. However, administrative management may lead to teachers becoming “managed” in the administrative system, lacking initiative in the operation of the administrative system, and their independent development is also restricted (Shen Suping, 2008). The employment contract for teachers has the characteristics of a market contract, but it cannot completely position public school teachers as ordinary workers. In response to the special status of teachers, it is widely recognized to establish their “national staff” (Peng Jiang, 2004) status through “special administrative relationships” for regulation. However, there are still many practical difficulties in the relief of teacher rights.

So, can the issue of teacher rights remedies under the public law system and in the private law field be considered and resolved through a mixed legal system? To some extent, the rise of social law integrates the characteristics of “public private legal domains” and theories of “social public welfare”. This requires a specific analysis of the legal status and identity of teachers in public and private schools.

2. Analysis of the Legal Status of Public School Teachers and Private School Teachers

There are roughly three classification methods for the identity laws of public teachers in various countries around the world: First, civil servants, second, employees, and third, both civil servants and employees. For example, in the legal system of Germany, it is believed that “education has a dual characteristic of providing administrative benefits and infringing administrative benefits. Personnel who implement both providing administrative benefits and infringing administrative benefits must be held accountable by the state’s civil servants.” The teachers subject to this legal provision include public school teachers from both compulsory and non-compulsory education stages. As they are all executors of public schools, they all have the nature of civil servants. The legal system in Japan is influenced by the legal systems of European countries such as Germany and France. Its legal positioning for teachers is that both national and public school teachers in Japan are civil servants, and they are subject to special education civil servant laws issued separately from the Civil Servant Law. Even after the corporate reform of national universities, Japan’s national universities became independent administrative legal entities, and their identity only changed from civil servants to civil servants serving administrative legal entities under the constraints of public law contracts (Shen Suping, 2009). In common law countries such as the United States, teachers in public schools have the legal status of government employees. California refers to teachers in public primary and secondary schools as “certified government employees”, while ordinary state government personnel are classified as “graded government employees”. The classification criteria are that public school teachers need to undergo certain tests to obtain corresponding teacher qualifications before they can be hired. The right to appoint them lies with the local education administrative department. It can be said that at this time, civil servants enjoy various rights and obligations stipulated in the Civil Servant Law. Based on their identity as employees, they must also fulfill corresponding rights and obligations.

The situation in our country is that after the reform of public institutions, the classification of teacher identity and status by the government has become three categories based on funding

sources and business functions. One is the compulsory education stage classified as public welfare, in which schools are not allowed to obtain market profits and all their funding comes from financial guarantees. The second category is public welfare, which is divided according to the criteria that it not only undertakes part of the social public welfare responsibilities, but also can receive remuneration through some paid services. The third is public welfare institutions such as private education that undertake social responsibilities but have a high degree of socialization and income sources. Simply put, after the reform of public institutions in China, teachers in the public compulsory education stage still maintain their staffing, while teachers in high schools, higher education institutions, kindergartens, and private schools are designated as public welfare second and third class employees under the appointment system, and therefore should be regulated by the Labor Law and the Labor Contract Law. From this perspective, the difference between teachers in private schools and those in public compulsory education schools is significant, but their legal status with teachers in public higher education exists as hired laborers.

However, despite being employees, there are still significant differences in the identities and corresponding legal relationships between private school teachers and public school teachers. We can clearly perceive that the status and protection of teachers in private schools are inconsistent with those in public universities. The reason behind this is that even though public universities have undergone corporate reforms, teachers in public schools have become employees of public schools and do not have the status of civil servants. But just like Japan's corporate reform of national universities, since the status of national universities is still administrative corporations, the relationship between national university teachers and their affiliated universities is a public law contract (Shen Suping, 2009). Taking public universities as an example, according to Wu Xi's viewpoint, public universities in China are institutions established by the government and granted legal status as public institutions. Even after the establishment and reform of public institutions at the Third Plenary Session of the 18th Central Committee, universities can use independent positions to hire teachers to strip away the rigid

personal attachment relationship in the single position system. The relationship between teachers in public universities and public higher education institutions has a certain degree of private law relationship (Wu Xi, 2018). However, to some extent, this private law relationship is more similar to introducing the contractual relationship in private law into the public law relationship formed by public higher education teachers and public higher education institutions, resulting in the form of the public law contractual relationship mentioned earlier. On the other hand, in the discussion of the legal person status of private schools, Wang Shan proposed in 2017 that, corresponding to the classification of legal persons in the General Principles of Civil Law, the legal person classification of for-profit private schools and non-profit private schools should be further clarified through legislation as for-profit legal persons and non-profit legal persons (Wang Shan, 2017). It is obvious that after the reform of social public welfare institutions, private schools have been classified into three categories of public welfare. Private school teachers, as employees of private schools, form a typical private law relationship with private schools, which is an equal civil legal relationship regulated by the Labor Law and the Labor Contract Law. That is to say, there is a significant difference in the legal status of teachers between private and public universities. Private teachers protect their own rights by applying for arbitration and civil litigation, while public university teachers have administrative remedies such as appeals due to their certain public law relationships.

3. Another Approach: The Legal Status of Teachers from a Sociological Perspective

Therefore, due to the differences in legal relationships and legal status, the description of the equal legal status of private school teachers and public school teachers in the Private Education Promotion Law clearly lacks practical legal practicality, and therefore cannot solve the corresponding problems of protecting the rights of private school teachers from the perspective of private law and providing remedies for the rights of public school teachers under the unique legal relationships. However, as a profession, the specific rights protection and relief issues of teachers still exist and deserve attention and cannot be neglected due to the difference in identity between private school

teachers and public school teachers. The question arising from this is, how can the rights and remedies of public school teachers in public law relationships and private school teachers in private law relationships be equally protected and protected? Public school teachers and private school teachers are subject to different laws due to their different legal statuses. Therefore, social law, as an emerging legal domain, is in line with the dual attributes of teacher legal status; Its core theoretical system aims to balance unequal legal relationships and further tilt legislation to protect the weak, thus providing a legal basis for the protection of the rights of teachers.

Pound stated in "Jurisprudence" that law aims to achieve its objectives through the recognition of certain individual, public, and societal interests. In his perspective, interest is a starting point beyond the law, and the law must serve this starting point, that is, to serve personal interests, public interests, and social interests. Under this classification standard, after the reform of social public welfare institutions in China, whether it is public compulsory education in the first category of social public welfare, non-compulsory education in the second category of social public welfare, or private education in the third category of social public welfare, although there is a difference in the degree of socialization, because they all have the function of assuming social public welfare responsibilities, they can all be included in the perspective of social law regulation because they have the same characteristics of social interests. The protection of the rights and interests of teachers in private and public schools, as a result, has a legal basis.

Dong Baohua said that due to the drawbacks of the dual legal structure (i.e., public law and private law structure), labor contracts that appear to implement "contractual freedom" and "free negotiation" are essentially unequal between labor and management. The spirit of contract can only achieve "formal fairness", and the so-called "substantive fairness" still needs to be corrected from the perspective of "social interests", that is, "the rational return of identity" (Dong Baohua, 2015). The "identity" here is not the "identity" referred to by privilege level but is specifically constructed with "social security and social welfare" as the core, aiming to balance the legal concept of the rights and interests of dominant and vulnerable groups,

that is, the concept of social law. On this basis, Wu Xi introduced the basic principle of social law of "leaning towards protecting the weak" into the protection of teachers in public higher education institutions. He believed that public higher education institutions and teachers form a pattern of strong and (relatively) weak groups. Therefore, teachers in public higher education institutions should receive treatment such as "leaning towards legislation" and "protecting the weak". If the perspective of social law can balance the strong and weak groups, in order to solve the problem of public power cracking down on private power that may exist between public and public university teachers, the approach of social law is undoubtedly more suitable for protecting the rights of private school teachers.

Due to the superficial equality between modern labor and management, which conceals the essentially unequal membership relationship between labor and management, significant information asymmetry, economic power gap, and property compatibility with personal characteristics, there is actually a huge gap between the strength of labor and management. Due to the superficial equality between modern labor and management, which conceals the essentially unequal membership relationship between labor and management, significant information asymmetry, economic power gap, and property compatibility with personal characteristics, there is actually a huge gap between the strength of labor and management. (Wu Xi, 2018) From another perspective, with the development of the corporate system, a unique relationship has emerged in modern society, namely the relationship between legal persons and natural persons. On the surface, legal persons and natural persons appear to be completely equal, but in real life, the emergence of the legal person system has disrupted the original balance of property relations. Its strong position not only infringes on the property rights and interests of natural persons, but also further damages the personal rights of workers due to the interweaving of property and personal relationships in modern society (Dong Baohua, 2001). For employers and employees in private schools, this inequality in labor relations is even more significant.

4. Protection of Teacher's Rights from the Perspective of Social Law

Due to the inherent drawbacks of the dual

structure of legal relationships between the political state perspective in public law and the civil society perspective in private law, some scholars believe that modern society has once again transformed from the identity to contract society mentioned in Maine's "Ancient Law" to a rational return from contract to identity. If both parties are allowed to determine their own rights and obligations, it will inevitably lead to some unfair results. Therefore, some contract theories in modern society advocate that parties should be required to assume different obligations based on their different positions in the contract relationship. The rational return of identity mentioned earlier does not refer to the personal attachment relationship in traditional feudal society, but to a new identity that arises based on strong and weak subjects (Dong Baohua, 2001). Social law is a legal tool and bridge that balances inequality and equal relationships. Specifically, the solutions provided by social law include three levels: macro, meso, and micro. The macro level social benchmark law refers to regulating social relationships with strong and weak characteristics at the macro level, and its typical representative is the formulation of basic laws such as the Compulsory Education Law. At the micro level, it is to solve the actual contractual relationship, or how to adjust the contract in advance according to the strength of the parties (Dong Baohua, 2001). Due to the fact that the adjustment of the benchmark method is often a bottom-line control, while the adjustment at the micro level is often a factual relationship, there is a lack of immediate applicability for protecting the rights and interests of workers. Therefore, many countries consider the adjustment of the meso level, which is the method of social groups, as the main adjustment method. Its core idea is to incorporate the interests of the weak into group societies for protection (Dong Baohua, 2001).

As a result, something between Rousseau's discourse on "public will" and "individual autonomy" gradually formed among atomized individuals, becoming a tool for protecting the rights of the vulnerable under the rise of modern individualism. According to the previous discussion on the rational return from identity to contract, the group of hired teachers should form a union of teacher groups based on their own status characteristics to jointly address the problems faced by the teacher group. Although

the original function and organizational form of teacher associations were far from what we expect and attempt to construct today, similar to industry unions, in modern atomized societies, forming social organizations to protect teachers with specific professional identities is an excellent way to regulate the problems that are difficult to solve in public and private law. Moreover, although the construction of teacher associations as an organization lacks certain widespread recognition in China, as a form of professional and technical profession federation, the United States not only has well-known associations of lawyers and doctors, but also has various industry teacher associations, such as the second largest teacher association in the United States, The American Federation of Teachers (AFT), and the industry-specific American Association of Physics Teachers. In addition to its responsibilities in academic communication and exchange, it also undertakes the responsibility of serving the legitimate rights and interests of teachers.

Therefore, for the different rights issues that arise between private teachers and public school teachers in China due to their different legal statuses, according to the current situation in our country, it is a possible way to supplement the areas that are difficult to regulate by public and private law through an organizational form of teacher associations and better protect the legitimate rights and interests of teachers. When this self-organizing force becomes stronger, teachers in atomized identities can seek relief from industry organizations when facing infringement of the rights of employers, thus having a certain degree of room for maneuver and not using individual power to fight against employers. This ultimately leads to the tragic death of Comrade Liu Lingli, who refused to comply with court orders due to the suspension of medical and social security, and the Bowen College of Lanzhou Jiaotong University.

In the field of social law, providing organizational protection for teachers who are in a disadvantaged position in employment relationships through a form of social organization, and forming a teacher guild based on professional identity classification and admission qualifications, should be able to protect the legitimate rights and interests of teachers. At the same time, as a macro level social benchmark law from the perspective of social law and the joint coordination of

adjustments to micro level factual contractual relationships, it is necessary to protect the legitimate rights and interests of atomized individual workers. Because often, vulnerable groups are unwilling or unable to file lawsuits when under pressure from dominant groups. Silver Ear, regulating arbitration should be a complementary system that combines the characteristics of public and private legal domains with administrative law enforcement, further enhancing its legal effectiveness and enforcement effectiveness.

References

- Dong Baohua. (2001). *On the Origin of Social Law*. Beijing: China University of Political Science and Law Press, 60-66, 201-233, 212.
- Dong Baohua. (2015). *Social Law and Legal Society*. Shanghai: Shanghai People's Publishing House, 146-152.
- Peng Jiang. (2004). A new way out for the reform of the personnel system of university teachers: social management. *Education Science*, (5), 33-37.
- Shen Suping. (2008). Reflections on the Legal Status of Teachers in Public Schools in China. *Higher Education Research*, (9), 54-58.
- Shen Suping. (2009). *Principles, Norms, and Applications of Educational Law*. Beijing: Education Science Press, 185-187.
- Wang Shan. (2017). On the Issues and Institutional Construction of Corporate Governance in Private Schools in China. *China Education Legal Review*, (00), 193-206.
- Wu Xi. (2018). Exploration of the Legal Status of Teachers in Public Universities from the Perspective of Social Law. *Education Science*, 34(04), 61-66.