

Research on the Employment Relationship of Retired Workers

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Abstract: The article argues that "population aging" is a major problem facing China today, and relevant laws and regulations need to keep up with the times. Closely linked to this is the increasing healthy life expectancy per capita and the expectation of most older people to continue working after retirement for the rest of their lives. There are a large number of elderly labor force in our country, and the idle labor resources of the elderly are a huge waste. There are a considerable number of retired re-employment groups in life, but the law of our country lacks protection for them. We should draw lessons from the laws and policies of other countries in the world and protect the legitimate rights and interests of the retired re-employment groups according to the actual situation of our country.

1. Trends in Retirement and Reemployment:

1.1. Growth in Healthy Life Expectancy

Since the 21st century, every country in the world is facing the problem of population aging, which may be more serious for China. "Getting old before getting rich" is the current situation facing our country. According to the data of the seventh census, the population over 60 years old in my country accounts for 18.7%, of which the population over 65 years old accounts for 13.5%. Along with the economic development, the optimization of medical infrastructure configuration in the society and the improvement of people's comprehensive living standard, the health level of the elderly in China is constantly improving. According to data from the Chinese Center for Disease Control and Prevention, the number of healthy 60-year-old males with self-assessment increased from 12% in 1987 to more than 18% in 2015, and nearly 20% for women. This corresponds to a significant delay in the age at which workers in China remain in the labor force. According to the <Blue Book of Senior Living Survey Report>, more than 40% of the relatively younger seniors (60-64 years old) are active in the job market and want to work again. 80% of the younger seniors also want to continue to work after retirement, which shows that re-employment after retirement is a more common situation and has a booming trend. In addition, the current level of social security in China is insufficient, and there are large differences in retirement benefits between urban and rural areas and between regions, so it is difficult to rely on social security alone to support the needs of retirees. It is not difficult to see that the retired re-employed have become a large-scale employment group. Although the situation of retired re-employed people in China tends to be normalized, there is no complete and systematic legislation on the protection of labor rights and interests of retired re-employed people, so that they can be effectively protected when their labor rights and interests are infringed.

1.2. Injury to the Rights and Interests of Re-Employees Due to Unclear Labor Relations Identification

The biggest damage to the labor rights of the retired reemployed is the unclear identification of the employment

relationship. At present, in the process of re-employment, the retired re-employed who are not recognized as having a labor relationship are usually treated according to the labor relationship, which is adjusted by the civil law, and to a large extent, the rights and interests of the retired re-employed are not properly protected. This situation has stifled the willingness of some retired seniors to work, and has forced most of them to accept "less equal" treatment and be forced to work in a relatively poor environment and pay. Even if the retired elderly provide the same labor as the current working age group, the employer does not need to implement the same protection for the retired elderly as the working age group, and the common minimum wage, working hours and other protective regulations do not apply to them, which can significantly reduce the employer's employment cost, and for the retired retired people. Because the labor relationship is between the employer and the elderly who continue to work voluntarily establish a civil relationship with them, the employer actually does not violate their legitimate rights and interests. However, the establishment of civil relationship also needs to follow the principle of fairness, voluntary does not mean fair, but in the face of the conditions proposed by the unit, the retired people expect to get the opportunity to continue to work, most of them will choose to compromise. What's more, the retired elderly are still not strong enough to fight against the employer and are still at a disadvantage. In addition to the above problems, the protection of the labor rights and interests of the retired workers is also characterized by relatively empty legislation, insufficient protection and lack of remedies. There are also obvious shortcomings in the adjustment of diversified labor market, which makes the labor rights and interests cannot be effectively protected, and it is urgent to conduct an in-depth and systematic investigation.

2. The Main Reasons for The Unclear Identification of Labor Relations

2.1. Ambiguous Legal and Regulatory Provisions

At present, the main reason for the unclear identification of employment relationship after retirement is the unclear legal provisions. According to <Article 21 of the Regulations on the Implementation of the Labor Contract Law of the People's

Republic of China>, "If a worker reaches the legal retirement age, the labor contract shall be terminated". According to this provision, elderly people who are re-employed after reaching the statutory retirement age are not allowed to form labor relations. However, according to Article 7 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law to the Trial of Labor Disputes (III), "If a labor dispute arises between a unit and a person who is employed by the unit and is already entitled to pension benefits or receives a pension according to law, and a lawsuit is filed in the people's court, the people's court shall handle the case in accordance with the common system of labor services". According to the judicial interpretation of the Supreme People's Court, whether it constitutes a labor relationship depends not only on whether it has reached the legal retirement age, but also on whether it enjoys pension insurance and receives pension. In addition to national laws, the identification of labor relations of retirement and re-employment groups in various parts of the country is also full of different voices. For example, <Article 61 of the Regulations on Labor Contracts of Shandong Province> stipulates that employers employ people who have enjoyed basic old-age insurance benefits or who have reached the legal retirement age, as well as students who have reached the age of 16. A written labor service agreement shall be concluded with the recruited personnel to clarify the rights and obligations of both parties. Article 56 of the Notice of the Shenzhen Intermediate People's Court on Printing and Distributing the Guidelines of the Shenzhen Intermediate People's Court on the Adjudication of Labor Dispute Cases States that employment disputes between employers and their employees who have reached the legal retirement age shall be handled in accordance with labor relations. These local judgment of labor relations or labor relations is still mainly based on whether to enjoy pension social insurance and other benefits, but Shanghai's Shanghai Labor Insurance Guanfa (2003) No. 24 document and the retired re-employed according to the special labor relations to identify. This undoubtedly causes confusion in the judicial situation.

2.2. Unclear Nature of Retirement Itself

The second is whether the legal labor rights can be obtained after retirement, which is the basis for the establishment of labor relations. Among them, retirement is understood by the public as the end of labor and the loss of labor rights. But the retirement system is not an abolition of labor rights. In my country, the current retirement system still has a very strong shadow of the planned economy. When the retirement system was formulated, our country was still in the era of a complete planned economy. Work units belonged to the state, and employment rights also belonged to the state. The retirement system is like a national planned economy. As part of this, the retirement concept at that time was no longer in line with the development of the current era. In today's world, it is generally recognized that retirement has the attribute of power, and the retirement system itself is a social security system for residents. From the perspective of our Constitution, it is the responsibility of the state and society to protect the livelihood of retirees, and to guarantee their right to re-employment is also a guarantee of their continued development and contribution to society; from the perspective of our labor law, age is a mandatory requirement, and those who exceed the retirement age are required to withdraw from the job market. However, this provision is intended to protect workers from

having a guaranteed income in old age, and is not a mandatory withdrawal of their right to re-employment. Regarding the right to work, Article 42 of the Constitution states that "Citizens of the People's Republic of China have the right and duty to work". Labor is both a citizen's duty and a citizen's right. Our law only stipulates that the working age cannot be less than 16 years old, but there is no upper limit for the working age, according to the general saying "there is no prohibition but freedom", not to mention that there is no clear regulation on the working age. As a member of the labor market, retirees have contributed to social development, and if they still have the will to continue to participate in labor after retirement, they should not be restricted from continuing to develop their residual energy based on human rights considerations. Freedom is freedom without prohibition. Therefore, the reemployment of retirees should be recognized. Retirement and reemployment is also a concrete practice of the concept of active aging from "demand" to "human rights". It is also a way for retirees to get rid of their "burden" status, re-enter the job market, and use their own experience and technology to contribute to social development.

3. Identify the Solution to The Employment Relationship

3.1. Propose Special Labor Relations Ideas

As mentioned in the previous article, the current employment relationship of post-retirement re-employment is not clear, according to different laws and regulations, and the level of confusion, this situation is a real harm to the interests of the post-retirement re-employment group. There are two mainstream theories on the identification of employment relationship after retirement, the labor relationship theory and the labor service relationship theory. However, whether it is a labor relationship or a labor service relationship, there are some defects for the retired and re-employment group. such as the identification of labor relations, then due to the adjustment of the <Civil Code>, the salary of the retired re-employed may be far below the market average, and the labor paid may be more, and can not be protected by the inclined labor law. This is a substantial unfairness. For example, the identification of labor relations can not be compared with the workers of the right age because of their physical function, working hours and the intensity of their work after retirement, which is also a substantial unfairness for the workers of the right age.

3.2. A Comparison of Employment Relations of Reemployment after Retirement in Foreign Countries

Compared with the relatively serious aging of foreign countries, their experience is also more meaningful. As early as the beginning of the 20th century, Japan has entered an aging society, and now it is one of the countries with the most serious aging, so the relevant provisions of re-employment after retirement age have more reference significance. In 1996, the Japanese government promulgated the Employment Countermeasures Act, which regulates the employment situation of the elderly in the employment market reasonably and scientifically. In 2005, the Japanese government amended the Employment Insurance Act, which stipulates that the insurance regulations for the elderly unemployed workers should be added, including the payment of social insurance fees for the unemployed elderly workers who have purchased

social insurance and the elderly workers who are working. It clearly stipulates that if a worker continues to stay at work after the age of 60, his wages should be adjusted accordingly. The enterprise shall pay the basic fund for its work according to the regulations. The Law on Correcting the Employment Stability of the Elderly stipulates that enterprises have the obligation to continue to employ retired employees, and enterprises can re-sign labor contracts or postpone labor contracts with retired employees who continue to be employed. From this, we can see that retired employees can sign labor contracts with their units when they are re-employed, that is, re-employment after retirement in Japan can form labor relations. This provides an effective solution for the protection of the right to wage remuneration and labor rights and interests of the retired elderly working groups who continue to work at retirement age. In our country, there is still a lack of legislation in this regard. The Employment Promotion Law implemented in 2008 only stipulates that workers should not be discriminated against because of their nationality, race, gender and religious beliefs. However, there is no actual regulation on the age of employment. Eliminating age discrimination is only the first step. It is necessary to set up a more appropriate labor relationship according to local conditions.

3.3. Reasonableness of Special Labor Relations

For those people who are re-employed after retirement, we should provide a special labor relationship on the basis of labor relationship and include them in the regulation of labor law, so as to fundamentally protect the legal labor rights and interests of the retired re-employed people. Although the retired workers have exceeded the legal retirement age in China, they should have the labor rights as mentioned above and belong to the scope of protection of labor law in China. At the same time, because the working ability and physical quality of retired workers may be reduced compared with those of working age, they need to be protected by labor law

in the process of work. And there is a part of the retired people by already pension insurance treatment, so the corresponding minimum wage level should not be comparable to that of the working age. Therefore, I suggest to set up a special labor relationship for the retired workers, which should adopt lower legal working hours and wage level. However, for those who have reached the legal retirement age but have not paid the pension insurance for 15 years, the employer is supposed to bear the responsibility of payment, but the corresponding wage level should also be reduced. For the workers, they can feel more comfortable to work and play their spare energy, and improve their living standard in their old age with their own ability. For the employers, they can hire experienced and skilled workers from regular channels at a relatively low price and are less likely to be involved in disputes. In contrast, special labor relations are between labor relations and standard labor relations, which are still labor relations at root, but are an extension of labor relations. For our country, the coming aging society is both a crisis and an opportunity. Although we still have enough working people, a large population can add a considerable part of skilled and experienced workers. Their reasonable mobilization will not only solve the problem of lack of new growth of national pensions, but also greatly alleviate the problem of labor shortage.

References

- [1] Lu Xiaoming, "The Protection of the Rights and Interests of the Employed Elderly from the Perspective of Active Aging" "Legal Forum", vol.4, pp.124-126, 2021.
- [2] Dong Wenjun, "Reflection on the relationship between statutory retirement age and employment contract", "Jurist" vol.1, pp.170-171, 2019.
- [3] Yang Liangchu, "Postponing Retirement Policy: International Experience and China's Path", "Research on Local Finance", vol.10, pp.74-75, 2021.