

# Research on the Legality of Contract Service Period of University Teachers

Zhenyang Hu, Ziqiang Pang

Anhui University of Finance and Economics, Bengbu, China

## Abstract

In practice, the contract service period of university teachers' employment has the tendency of disorder and the problem of non-uniform judicial adjudication scale. The lag and generality of employment contract laws and regulations, the principle of "labor special law is superior to general law" is too vague, and other imperfect employment contract system and laws and regulations are the main reasons for the insufficient legality of the practice of employment contract service period of college teachers. No matter from the Angle of legality or rationality, the employment contract service period should be incorporated into the Labor Contract Law to regulate. The service period of the employment contract of university teachers should meet the requirements of the entity rule of Article 22 of the Labor Contract Law at least in terms of the agreed cause, the agreed period and the amount of breach.

## Keywords

**Employment Contract; Service Period; Liquidated Damages; Public Institution.**

## 1. Introduction

With the gradual promotion of the "double first-class" construction policy of the Ministry of Education, the demand for talents in colleges and universities has expanded rapidly, and the flow of high-level talents has become increasingly frequent. In order to prevent the outflow of high-level talents, universities often restrict the freedom of turnover of high-level talents through the service period of employment contract, that is, the minimum service period of teachers and the termination penalty in the employment contract. In recent years, the contract service period disputes between universities and teachers frequently enter the public eye. For example, Hu, a professor at Nanchang Institute of Technology, applied for resignation due to the five-year service period of his professional title, and was required to pay a penalty of more than 430,000 yuan, which triggered heated debate online. As to whether the "service period" can be stipulated in the employment contract, and how to stipulate the "service period", there is a huge dispute among universities, teachers and courts. Under the background of comprehensively governing the country according to law, governing education according to law and governing the university according to law, the service period of the employment contract of university teachers is an important means of the employment and management of university teachers at present, and it is urgent to conduct in-depth research on the legality of the service period in such contracts from the legal perspective.

## 2. The Institutional Background of the Contract Service Period of University Teachers

### 2.1. The Development History of College Teachers' Employment Contract

The labor contract of college teachers is the product of the reform of the employment system in colleges and universities. Article 17 of the first "Teachers Law" stipulates: "Schools and other

institutions of education shall gradually implement the system of teacher employment." Article 48 of the Higher Education Law, adopted in the late 1990s, stipulates that "principals of institutions of higher learning shall sign employment contracts with appointed teachers." In 2011, the Ministry of Human Resources and Social Security issued the Guiding Opinions of the CPC Central Committee and The State Council on Promoting the Classification Reform of public Institutions, which pointed out "deepening the reform of the personnel system" in "Promoting the classification reform of public institutions". Efforts will be made to improve the employment system and the post management system, "he said. Thus, the management of college teachers in our country has gradually changed from "identity management" to "contract management".

## **2.2. The Scope of Application and Legitimacy of the Service Period of the Employment Contract of University Teachers**

With reference to the provisions of the Labor Contract Law on the service period, the current cases of the scope of application of the employment contract service period of college teachers are classified into the following categories:

Provide special technical training expenses and special training. The service period is the product of the expanding demand for high quality personnel in today's colleges and universities. Therefore, in order to retain talents, colleges and universities sign professional and technical training service terms with hired teachers to limit the outflow of talents, thus enhancing the strength and popularity of the school. It is reasonable for colleges and universities to provide special technical training opportunities or pay special technical training fees to agree on service terms with employees, which is in line with social cognition and the provisions of China's Labor Contract Law.

Provide opportunities for career development. On the one hand, in order to make the career of college teachers to a higher level, on the other hand, in order to improve the level of colleges and universities, the two sides often sign high-level talent introduction agreement, continue to study for a doctoral degree agreement, advanced professional technology selection agreement and other agreements to promote the development of both sides, and as a condition, the minimum working years of teachers are agreed to be the service period. Compared with the provision of professional and technical training, this kind of special treatment provided by colleges and universities for teachers is not clearly stipulated in law, so in the process of performing the labor contract, the two sides often have disputes in order to realize their own greater interests.

In fact, colleges and universities support teachers to further their studies, provide housing, family allowances and other special treatment, so that college teachers can improve their teaching ability and academic level while their lives are guaranteed. Obviously, it can be understood as professional and technical training, so it is reasonable to apply the service period.

## **3. Practice Cases and Analysis of the Contract Service Period of University Teachers**

The service period is an important part of the employment contract of university teachers, and it is also an important means to prevent the outflow of high-level talents. Through the investigation and analysis of the typical dispute cases of the service period of the employment contract of college teachers, it can be found that the practice of the service period of the employment contract of college teachers tends to be disorderly and the standard of judicial judgment is not uniform.

### **3.1. There is a Serious Tendency of Disordered Practice in the Employment Contract Service Period**

#### **3.1.1. Diversity of Reasons for Agreement**

There are three common situations in which colleges and universities agree on the service period in the employment contract signed with teachers. One is the doctoral agreement, in which the school agrees to allow the teacher to apply for a doctoral degree and partially fund the degree, but the teacher must return to the school after a certain amount of time has passed since receiving the doctorate. The second is the high-level talent introduction agreement. When colleges and universities introduce high-level talents, they promise to provide them with certain financial assistance, such as settling expenses, scientific research funds, housing subsidies, etc. At the same time, teachers are required to work in the school for a certain number of years. Third, the senior professional and technical position qualification agreement, that is, colleges and universities agree to recommend school teachers to apply for senior titles, but teachers should work in the school for a certain number of years after obtaining senior titles, otherwise they should pay liquidated damages for the unfinished years in accordance with the agreement.

#### **3.1.2. Lack of Consistency in the Term of Service**

In practice, the average term of service in college teachers' employment contracts is 5-10 years. For example, in the "Personnel dispute between Zuo and Guizhou Institute of Engineering and Applied Technology", Zuo, as a teacher of Guizhou Institute of Engineering and Applied Technology, signed the "Agreement to study for a doctoral degree at Southwest University after leaving office" in June 2011, agreeing that the school would allow Zuo to study for a doctoral degree for three years. They also bear a total of 100,000 yuan in salary, benefits and degree bonuses during off-duty study, but must return to the school uniform within 10 years after obtaining the doctorate. In the personnel dispute between Hua and Huaqiao University, Hua Zuwei talent was hired by the school as a full-time teacher, and the school signed a talent recruitment agreement. According to the agreement, Huaqiao University will provide him with a total of 196,000 yuan in stability fees, research start-up fees, housing subsidies and living allowances, and Huaqiao University will serve him for at least eight years from the date of signing the contract. In the "Wei and Nanjing Audit University personnel dispute Proposal", in 2014, Wei and Nanjing Audit University signed an agreement for teachers to apply for senior professional and technical positions, agreeing that Nanjing Audit University agreed to recommend Wei to apply for professor professional and technical positions; Wei agreed to work in Nanjing Audit Institute for no less than 5 years after obtaining the qualification of professor professional and technical positions.

#### **3.1.3. There is No Standardized Standard for the Amount and Calculation Method of Liquidated Damages**

In doctoral degree agreements, universities often require teachers to return some or all of their financial aid, such as salaries and tuition fees spent by the university. For example, in the Personnel Dispute Proposal between Liang and Dehong Normal University, the doctoral degree agreement signed between Liang and Dehong Normal University stipulated that if Liang violated the agreement, the university should pay him five times the salary, tuition fees, allowances, awards, and scientific research funds paid during his doctoral study. Some universities even agreed in the doctoral degree agreement that teachers need to compensate for "talent program losses". In agreements for the introduction of high-level talent, universities often require teachers to return some or all of their financial aid, such as relocation fees, in proportion to the number of years they have not completed. In the qualification agreement of senior professional and technical posts, universities often determine a certain amount of penalty standard, and calculate the penalty according to the actual violation of the service life.

For example, in the "Wei and Nanjing Audit University Personnel Dispute Proposal", Nanjing Audit University and Wei agreed that if the service life is not enough to apply for transfer or resignation, they are willing to pay the penalty for non-performance of service life at the annual standard of 30,000 yuan.

### **3.2. The Judicial Judgment Scale of the Service Period of the Employment Contract is Not Uniform**

#### **3.2.1. There are Disputes in Different Courts on Whether the Service Period of Employment Contract Excludes the Right of Notice Termination of College Teachers**

The Labor Contract Law and the Regulations on Personnel Administration of Public Institutions (hereinafter referred to as the Regulations) stipulate that an employee of a public institution has the right to terminate a labor contract or employment contract by notifying the employer 30 days in advance. In the practical disputes over the time limit of college teachers' labor contract performance, different courts have different views on whether the time limit of college teachers' labor contract performance excludes college teachers' right of dismissal by notice in advance. Some courts hold that the service period excludes the teacher's right of termination by notice. Once a school and a teacher have agreed on a period of service in their employment contract, a teacher cannot terminate the employment relationship with the school if the school does not agree to the teacher's resignation. For example, in the "Personnel Dispute case between Zhang and Huaibei Normal University", the Huaibei Intermediate People's Court held that in the case where the two parties agreed on a service period of six years, since Huaibei Normal University did not agree with his resignation application, the personnel employment relationship between the two parties should not be terminated according to the contract agreement between the two parties. Some courts also held that the service period clause only set the conditions for the teacher to exercise the right of termination notice. In the case of a "service period" agreed upon between a school and a teacher, the teacher must bear the corresponding liability for breach of contract after exercising the right of termination notice. For example, in the case of "Personnel Dispute between Zuo and Guizhou Institute of Engineering and Application Technology", the Guizhou Intermediate People's Court held that Zuo, as a staff member employed by Guizhou Institute of Engineering and Application Technology, has the right to terminate his labor contract in accordance with the law, but should be bound by the agreement signed between the two parties to pursue a doctoral degree at Southwest University. Zuo returned to work in Guizhou Institute of Engineering and Application Technology after his PhD graduation in 2014, and applied for resignation on May 17, 2018, unwilling to establish labor relations again and willing to bear the liability for breach of contract agreed in the agreement. Zuo's lawsuit request should be supported.

#### **3.2.2. There are Disputes in Different Courts over the Applicable Legal Basis for the Service Period of Employment Contract**

Some courts hold that the service period of the employment contract applies to the Regulations, and colleges and universities can freely agree on the service period with teachers on an equal and voluntary basis according to the Regulations, and the court should not interfere with the "service period" and "default amount" agreed by the two parties. For example, in the "Proposal for Personnel Dispute between Mo and Nanning Vocational and Technical College", the two parties agreed on a 6-year service period and the corresponding liquidated damages in the labor contract. The Xixiangtang People's Court of Nanning, Guangxi Zhuang Autonomous Region held that the unit handling the case should apply the personnel law provisions, and the Labor Contract Law of the People's Republic of China has adjusted the labor relationship between the employer and the worker, and did not include the labor relationship between the public institution and its staff, so the claim that the liquidated damages agreement is illegal

cannot be established. The court also held that the Regulations did not stipulate the service period of the labor contract, so the relevant provisions of the Labor Contract Law should apply to the service period of the labor Contract Law. Nanjing Intermediate People's Court of Jiangsu Province in the "Wei and Nanjing Audit Institute personnel dispute case" that the nature of the qualification agreement disputed by the two sides belongs to the service period agreement, about the service period agreement and the liability for breach of contract, "Labor Contract Law" Article 22 provides the conditions and liability for breach of contract for the employer and the worker to sign the service period agreement. The "Regulations" and other relevant personnel laws and regulations do not make substantive provisions on the service period and breach of contract liability agreed between the public institution and the staff, so the relevant laws and regulations of the labor law should be applied.

#### **4. College Teachers Employment Contract Service Period Regulation Path**

Article 22 of the Labor Contract Law makes clear provisions on the service period and termination penalty stipulated by the employer and the worker in the labor contract. The service period of the employment contract of university teachers shall conform to the requirements of the entity rules of Article 22 of the Labor Contract Law at least in terms of the agreed cause, agreed period and the amount of breach.

##### **4.1. The Agreed Cause**

The agreement on pursuing a doctoral degree shall of course be interpreted as professional and technical training. The school agrees to allow the teacher to pursue a doctoral degree and to provide certain financial assistance, such as tuition and housing. While earning a doctorate, teachers also improve their knowledge and academic level. Therefore, studying for a doctorate is naturally interpreted as professional and technical training, and the university and teachers can agree on a service period in the doctoral agreement.

The agreement for the introduction of high-level talents can be applied to professional and technical training by analogy. The economic subsidies such as settlement fee and scientific research start-up fee in the high-level talent introduction agreement are not the fees paid by colleges and universities for the professional and technical training of teachers, but the material welfare and other special benefits provided by colleges and universities for teachers. The Labor Contract Law does not specify whether the term of service is agreed under such circumstances. According to the general theory, high-level talent recruitment agreements can be likened to professional and technical training, and economic subsidies such as relocation fees can be likened to special training fees. The two have both similarities and correlation. First, there are similarities in payment methods. Generally speaking, the laborer pays a certain amount of physical or mental labor, and the employer pays a certain amount of labor consideration, such as salary, bonus and other welfare benefits. However, the above two cases are not the labor remuneration given to the worker by the employer, but the advance welfare payment when the worker has not paid the labor remuneration. Secondly, the purpose of the two payments is the same, either to improve workers' professional skills and level, or to solve workers' economic problems, so as to provide a higher quality labor force. Therefore, the author agrees that the high-level talent introduction agreement should be applied to professional and technical training, and colleges and universities can agree on the service period on the premise that they promise to provide financial assistance such as teacher fee settlement in the high-level talent introduction agreement.

##### **4.2. Agree on the Term of Service**

The Labor Contract Law does not specify the term of service agreed between the employer and the worker. According to the principle that "freedom is not prohibited by law", the length of the

service period belongs to the content that the employer and the worker can freely agree on. The reason why the Labor Contract Law does not make clear provisions on the length of the service period is that the special training between the employer and the worker has a big difference in training costs, training time, training difficulty and other aspects, so it is not suitable to specify the length of the "service period" through a clear period, but more suitable for the free agreement between the two sides. However, the length of the "service period" of the employment contract of university teachers should also follow the following principles.

The agreement on the service period shall follow the principle of reasonableness. Although the Labor Contract Law does not specify working years, it does not mean that universities and teachers are free to agree on working years. The length of the service period must adhere to the principle of rationality, and the service period must be reasonably determined according to the training cost, training difficulty, training duration and other factors. Generally speaking, the higher the cost of college, the longer the training period, and the longer the service period that can be agreed upon.

The agreement on the service period shall follow the principle of equal consultation. In practice, employment contracts are often form contracts provided by colleges and universities. Teachers only have the right to sign or not to sign a contract, and rarely can negotiate the specific content of the contract with the university on an equal footing. Therefore, in the process of signing employment contracts, colleges and universities should attach importance to equal consultation with teachers, respect the autonomy of teachers' will, pay due attention to individual differences, and determine the length of service on the basis of respecting the will of both sides.

### **4.3. The Amount of Breach of Contract**

According to Article 22 of the Labor Contract Law, where a laborer violates the service term agreement, he shall pay a liquidated damages to the employer in accordance with the agreement. The amount of liquidated damages shall not exceed the training expenses provided by the employing unit. The amount of liquidated damages required by the employer to be paid by the worker shall not exceed the share of the training fees not completed during the term of service.

The liquidated damages incurred during the performance of the employment contract of an institution of higher learning shall not exceed the training expenses of an institution of higher learning. The tuition fee, transportation fee and accommodation fee provided by the school in the agreement for the teacher to study for the doctoral degree, as well as the salary paid by the teacher during the part-time doctoral study; In the high-level talent introduction agreement, economic assistance such as resettlement fees, housing subsidies, and research start-up funds should be included in the scope of training expenses. The liquidated damages agreed by colleges and universities during the employment contract shall not exceed the economic costs paid by colleges and universities. According to the relevant provisions of the Labor Contract Law and the Civil Procedure Law, colleges and universities should bear the burden of proof for the special training costs they provide.

The liquidated damages that universities require teachers to pay shall not exceed the training expenses that should be shared for the unfulfilled part of the service period. The liquidated damages agreed upon in the service period of the employment contract of a college or university shall not exceed not only the total amount of the training expenses, but also the training expenses payable for the unperformed part of the service period. It should be noted here that research start-up funds are often issued according to the declaration of research projects, so the penalty for research start-up funds should not be calculated according to the time limit, but should be calculated separately according to the completion of the research project. In practice, some universities have noticed the particularity of research start-up funds

and made a separate provision on the calculation of liquidated damages for research start-up funds, which is worthy of affirmation.

## 5. Conclusion

As some studies have pointed out, the retention and stability of high-level talents in universities is a comprehensive and systematic task. In addition to stabilizing high-level talents by employing contract service period, universities should develop a performance based salary system and dynamic welfare system that are highly attractive to high-level talents from the perspective of respecting knowledge and talents, emphasizing ability and performance. Moreover, they should establish a working environment and cultural atmosphere that give full play to the enthusiasm and creativity of high-level talents. From the latter perspective, universities and teachers should agree on the contract service period according to law, pay attention to equal consultation with teachers on the basis of respecting the rule of law, and pay attention to using the rule of law thinking and methods to solve problems in the personnel management of colleges and universities, so as to create a good rule of law environment in colleges and universities, and make the rule of law become one of the important institutional factors for colleges and universities to attract and retain high-level talents.

## References

- [1] Guangcai Yan: The track, Problems and Future direction of the reform of university teacher employment System, China Higher Education Research, vol.10(2019).
- [2] Jinhua Cai, Xiaoyan Qiu: Research on the legitimacy of the "quasi-employment-permanent employment" system in public colleges and universities, Exploration of Higher Education,06(2020).
- [3] Wenhui Lu: Thinking about the legality of the "service period" clause in the Employment Contract of University teachers, China Higher Education Research, 02 (2021).
- [4] Huisi Wang: On Contractual Management of high-level Talent Flow in Colleges and Universities -- A Review of the legal nature of the employment contract of high-level talents in colleges and universities, China Higher Education Research,11(2019).
- [5] Jing Xu: The legal nature of the employment contract of "either promotion or departure" in colleges and universities and the rule of law logic of the system, Chinese Law,05 (2020).
- [6] Yi Zhao: The Blind area of the rule of law in public institutions: Reflection on the difficulty of resignation and high penalty, Journal of Southeast University (Philosophy and Social Sciences Edition),05(2017).
- [7] Tiegung Liu: Institutional Obstacles to the realization of the right of resignation of employees in public institutions and their overcoming, Law,12(2019).
- [8] Sufeng Zhang: Lack of legislation and Perfection of Service term default system, Journal of Law,01 (2017).