

Equal Value of the Right to Work With Multi-Implications

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Abstract

The value of the right to work involves adversary and unification of the value of survival, development, freedom, equality and order. Gene, identity and labor contracts, as important factors influencing the right to work as well as important standards to judge whether equal value lies in the right to work, influence the definition of the labor main body and the interpretation of the concept of labor. By connecting the equality of the start, the process and the result of the right to work, these factors lie throughout the whole process of obtaining the right to work.

Key words: The right to work; Equality; Gene; Identity

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INTRODUCTION

In the history of human development, labor plays an undeniable role, which not only produces human beings but the materialistic and spiritual riches man depend on. However, labor and the right to work in the human history don't display consistence in history and logic (Xue, 2010). Along with the changes in man's social life and the waking of the right sense, the economic, cultural and

political factors condensed in labor have been inspired. Especially due to frequent occurrence of labor disputes and conflicts, claims on the right to work are made, making it a universal social right.

1. THE IMPLICATIONS OF THE EQUAL VALUE OF THE RIGHT TO WORK

As a lasting issue, equality was produced when people began to distinguish themselves from others and establish the sense of multi-subjects (Zhuo, 2006). In ancient Greece's prosperous civilization period, Aristotle endowed equality with a significant role in law morality by proposing two influential statements: first, moral equality refers to that similar persons should be treated in the similar way and different ones should be treated differently according to the degree of difference; second, equality is similar to justice, therefore injustice means inequality (Westen, 1982). Even after nearly 2000 years, in France's Constitution in 1795, such an implication still existed with such a statement that equality means everyone is treated equally by law, no matter it involves protection or penalty.

The stereotype view of equality cannot cover everything in our real life. Just as what Edgar Bodenheimer says, equality is an inclusive concept with multi-implications covering the right of political participation, the system of income distribution, or the social and legal status of the inferior group (Bodenheimer, 1999). Obviously, equality connects the justice of entities and procedures, the balance of relief and penalty and is restricted by historical conditions and historical relations. Despite its multi-dimensional meaning, it's sure that it is a principle of equity based on comparison with similar circumstances treated similarly and different ones dealt with differently, it is equity beyond numerical average of objection to privilege and prejudice.

In the whole sense, labor is a complicated activity including the start, the process and the end, that are the

acquisition of employment, conduct of productive activities and enjoyment of labor achievements. The right to work, fulfilled in time and space throughout these stages, refers to the right enjoyed by the laborer related to their work. As an accumulated right, it refers to the reality that laborers protected by law can earn labor opportunities and relevant benefits through their labor (Wang, 2001), including labor opportunities, labor conditions securing laborers' life and health as well as democratic management. Meanwhile, necessary spare time to refresh laborers and vocational training also falls into the right of labor conditions.

In the wealth of right connotation embodied by the right of labor, the implication of equal value exists throughout the labor process. The equality at the starting point refers to equal posts and opportunities for people with labor capacity and desire, which rejects the consideration of laborers' physical condition, qualification and social status although these really have influences on the labor process and result to some extent. Equal start is followed by equal process which is an abstract expression of relevant uniformity in laborers' work places, working hours, welfare facilities and so on and protects the relationship between laborers and employers. Such equality avoids conflicts between laborers and employers by maintaining the balance between them. Equality of the end is best manifested in the distribution of labor achievements. Despite diverse distribution ways in China, distribution in accordance with labor is still dominative which, conducting distribution completely according to labor, fundamentally rejects the distribution system featured by exploitation based on private ownership of the means of production, and eliminates the inequality among people (Li, 2001).

2. FIGHTING AGAINST THE PREJUDICE AGAINST THE RIGHT TO WORK BASED ON GENETIC DIFFERENCES

Human society has been segmented for quite a long time by race and gender, hence forming labels with racial and gender differences attached to laborers' right to work. It is such explicit genes that lay a basis for individuals' equality in gene and form the major barrier to equal right to work, which is impermissible in any country. Objectively, we have enough legislative evidences to support genetic equality related to the right to work. Article 1 in Universal Declaration of Human Rights points out that everyone is born equal and should be treated equally in terms of dignity and right, which is further confirmed by some other institutions such as International Agreement on Economic, Social and Cultural Right, International Agreement on Eliminating All Forms of Racial Prejudice. Domestically, equality in the right to work is manifested in some specific items such as "no prejudice is permitted in laborers' opportunities to work due to differences in

nationality, race, gender or religious beliefs laid down in the Labor Law, the Labor Contract Law and so on.

In our real life, prejudice due to gene has become a universal and global issue in the realization and security of the right to work. It is often heard about that American blacks have no access to equal right to work compared with whites of the same capacity, Chinese women even cannot get a job as a postman due to their gender and more women are faced with unequal opportunities of promotion due to pregnancy and giving birth to a baby, some are rejected due to their height or appearance, some are declined because of some possible risks of disease through genetic examination during the physical checkup. It is revealed that inequality and prejudice in labor are manifested in diverse ways.

Height and size are only external reflections of individual genes with only natural meaning instead of social one, so there is no reason to treat people differently or reject people due to these. Along with the entry of the sense of beauty into the labor field, people's height and size are converted into value assessment of human sense of beauty and then indexes recognized by the public are formed with some standards developing into the basic requirements for some jobs by the whole society. This is beyond individuals' inner desires or standards for appreciation; instead, it falls into a kind of vulgar idea and custom to judge a person according to his appearance, which is a violation against the basic concept of equality and the equal value of the right to work.

In the modern society, an increasing number of women are engaged in some traditionally rejected careers such as servicemen or cooks. Accordingly, it is regarded prejudice to differently treat or reject women and it is forbidden by law to elevate the employment standards for women. This repeatedly confirms Marx's statement on women's equality "Everyone aware of little history knows that there would be no great social reform without women's push. Social advance can be precisely measured by women's (including those ugly) social status (*Collective Works of Marx and Engels [Vol.10]*, 2009, p.299). The practice of selecting laborers with genetic examination is a repetition of the history during which people carrying specific genes were treated cruelly for a long time with the abuse of the laws of genetics and therefore should be eliminated from the modern civilized society. In judicial practice, expansion can be made to the items related to forbidding working units to reject laborers with infectious disease pathogens in Employment Promotion Act to include those with risky genes.

If the prohibition against gene-related prejudice is a negative equal value of the right to work, the special protection over the female, the disabled and those with risky genes reflects positive one which is a principle of different treatment based on the purpose to achieve real equality. In practice, in addition to implementing The Law of Protecting Women's Right and The Law of Protecting Disabled People's Right, government duty should be constantly enhanced to create equal employment

opportunities for the inferior and to offer more human-oriented vocational training and labor security.

3. ELIMINATING UNEQUAL RIGHT TO WORK BASED ON IDENTITY

As is generally accepted, equality is intended to eliminate privilege which means what one earns profits or benefits not from its achievements but due to his membership of certain groups or classes. (Han, 2010) With the perfection of the employment institution, the channel to get a job or promotion with some economic or political advantages or some preferential policies for some special vocations has been cut off. Even in those monopolized fields such as petroleum and tobacco making, the traditional employment pattern for the staff's children has been reformed to replace the old model without any consideration of qualification and capacity with current competitive selection. As a result, the privileges related to the right to work have gradually been abandoned and the idea of equal pay for equal work has been accepted, thus giving the greatest security to the freedom and equality of laborers. The aged and peasants, however, are still beyond acceptance in many fields. Obviously, depreciation of them as laborers will worsen the identity privilege in the labor right field. As a result, lots of disputes are related to the identity of these laborers, plunging the issue of protecting the right to work into the identity trap, the nature of which is the definition of the main body of labor and the interpretation of the concept of labor by law.

Both the Constitution and the Labor Law mention the right to work with citizens regarded as the main body in the former and laborers in the latter. Despite its failure to specify the identity of the main body of the right, the Labor Law and the Labor Contract Law define laborers as those establishing labor relations with domestic enterprises, private economic organizations and private non-business organizations together with those with labor relations with government agencies, institutions and social groups. In terms of the rank of the Constitution and the Labor Law in the legal system, the latter is a low-level law, therefore any person, no matter an old one, a peasant or a freelancer, falls into the category of "citizens" and cannot be excluded from the main body of the right to work laid down in the Labor Law. It should be realized that social life is displayed in a complicated way and get increasingly diverse along with the development of the society. Accordingly, some labor types not yet accepted will become a typical one in tomorrow's society. So the interpretation of the concept of labor should follow an open principle in order to keep the security of the right to work in the Constitution synchronized with social development (Wang, 2014). In the current society with more specified social labor division, peasants' agriculture, forestation, stockbreeding and fishing, together with freelancers' independent labor, are one of the modern

labor means and have undeniable role as the main body. Of course, there cannot be different standards for different identities in terms of the right to work. In accordance, the concept of labor should be interpreted in a broader way to include not only material production and commercial services focused on economic functions but spiritual production and public services which are of equal importance to development. In our opinion, even if laborers cannot make adjustments with their own will or feeling but with standard and consistent emotion (Zhang, 2013), it must be included in the concept of labor, otherwise, otherwise the equality in the right to work for those employed in relevant fields goes nowhere.

Additionally, instead of denying the equal value of the right to work, the establishment of the prohibition system of business trifle and certain special vocational conditions aims at maintaining public interests and protect business secrets, for example, previous judges cannot act as defendants as a lawyer within two years after resignation, the staff in government foreign affairs departments must have certain foreign language proficiency, and so on. Such higher requirements compared with those for ordinary persons actually aim at pursuing equal right to work in a broader and more profound way with relatively reasonable equality in rules.

4. ACHIEVING THE BALANCE IN THE LABOR RELATIONS IN TERMS OF CONTRACT

The Labor Law aims at respecting and protecting the equality of capital interests and labor interests, emphasizes the protection over laborers due to their interiority in labor relations and accomplishes the substantial transition from employment contracts to labor contracts defined by the Labor Law. To be precise, the establishment of labor relations has undergone a socialization process from the stage merely involving debt relations of both sides to connect other sections such as social insurance, position resources and so on (Li, 2012). Taking in these elements, the Labor Contract Law and other judicial interpretations attach greater importance to agreement when labor contracts are signed, implemented and dissolved and give some special items related to prohibition of penalty, heritage of labor contracts and laborers' freedom in dissolving contracts.

In recent years, the right to work has achieved unprecedented development in the international law system, with nearly 200 relevant international agreements approved by International Labor Organization such as the Agreement on the Abolishment of Forced Labor, the Agreement on the Right of Association Freedom and Organization Protection, hence laying basic standards for prohibition of forced labor, the right to organize labor union, the right to have group negotiation, and right to enjoy social security, etc. Due to

the lack of an efficient inter-government implementation system, the protection of the right to work mainly relies on an efficient domestic labor law system, only with which can the international standards become the basic principles or even specific items of domestic law and the national public power exert its regulation on labor contracts.

The adjustment after the intervention of the national public power is not defined at the very beginning but depends on the balance of power on both sides. We can define a datum mark for development — at the turning point between the limitless supply of labor force to the appearance of shortage, the labor relations begin to shift from the imbalance dominated by the employer to greater balanced market status (Cai, 2008). Therefore, the changes made by the national public power on labor contracts are based on the unequal power of the employer and the employee. In this way, such an important social relation can be adjusted through the intervention in the two sides' different social status with the enforcement of the public power (Xu, 2014). Generally there are two modes of adjustment, that is, the adjustment of individual labor relations and collective labor relations. Along with the establishment and amendment of relevant laws and regulations, the legislation on labor standards are getting perfect, issuing mandatory items about employment, labor safety and sanitation, working hours, social insurance and so on, covering how to sign, implement and dissolve a labor contract. Thus, the advantageous role of the working unit is restricted, a base line is set in the labor relations to maintain harmony and special labor relations can also be adjusted according to relevant legal evidences.

It is shown in international experience that labor relations cannot be solved merely at the level of labor contract. In the legal adjustment of labor relations, that of collective labor relations acts as the major one (Chang, 2009). In addition to signing collective contracts, having collective discussions and negotiations, laborers are expected to form a social force to maintain their own benefits, to pursue improvements in their political and economic status, to deal with the working units with their collective force, to overcome the insufficient adjustments on individual labor relations. In a word, they should establish and strengthen their labor union with which their democratic participation can be enhanced. To some extent, the sharing of the employer's management and profit-earning right give laborers an access to some information related to their interests and offer legal support for enterprises' management and supervision and therefore help laborers to achieve actually equal social status (Hao, 2011). The unmentioned right to go on strike should be delivered to the labor union in the future institutional design, which can be conducted after collective negotiations to achieve economic goals with rational and non-destructive acts, hence forming a subtle force to maintain the balance in labor relations. It is worth mentioning that although the Labor Law is intended to

protect laborers' benefits and the equality and balance in labor relations, but it is not based on the sacrifice of the interests of capital, otherwise there is no basis of justice and fairness. Instead, this law should aim at achieving decent labor and dignity with greater substantial significance with the idea of the social law.

CONCLUSION

Accordingly, professor Leighton Homer Surbeck of Yale University proposes a three-dimensional view of equality including collateral equality, inherent equality and constructive equality in terms of the law of employment prejudice (Donohue, 1994), hence confirming that the right of labor has to cover different protection for the exceptional group and punishment on those destroyers. No matter it is horizontal transfer or vertical development, equal value is a manifestation of the condition of the right to work based on three core concepts, that is, gene, identity and contract.

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