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Features Of Consideration By Courts Of Labor Cases On Reinstatement Of Employee

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ABSTRACT

The article highlights selected scholars' opinions on the definition of the concept of labor case and formulates its definition. Also, reviewed some issues of resolving labor cases on restoration of employment and analyzed the practice of courts on implementation of court decisions in this regard. In addition, the author focused on certain features of resolving of labor cases on restoration of employment.

KEYWORDS

Labor dispute, restoration of employment, resolution of labor cases

INTRODUCTION

In Uzbekistan, the need to improve the legal system to ensure effective protection of the rights and freedoms of each and every person is facilitated by the development of market relations in line with continued consolidation of democratization and renewal of society.

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Pursuant to the Article 13 of the Constitution of Uzbekistan, "Democracy in the Republic of Uzbekistan shall be based on the principles common to all mankind according to which the ultimate value is a human being, his life, freedom, honour, dignity and other inalienable rights. Democratic rights and freedoms shall be protected by the Constitution and laws" [1. 5].

According to Article 37 of the Fundamental Law "Everyone shall have the right to work, free choice of work, fair conditions of labour and protection against unemployment in the procedure specified by law". As regards, the judiciary plays a vital role in the effective and full protection of labor rights. It is necessary to ensure fair and timely consideration of labor cases, especially cases on the reinstatement of employees, and to further improve the procedures for resolving cases in court. In fact, large-scale judicial reforms across the country have led to an increase in the workload of courts of general jurisdiction in civil cases. This, in turn, necessitates further improvement of the legislation on civil proceedings and procedural norms. This arises the need to study of the theoretical and practical pecularirites of consideration of such cases in courts, the identification of key areas for improving the procedural and legal regulation of civil cases in this regard.

The society has been witnessing frequent termination of employment contracts with employees due to the course of globalization in the economy, the expansion and growth of the labor market, the emergence and development of the private sector. In addition, recent pandemics have negatively effected on the occurrence of such instances.

The data reveals that, in 2018, the inter-district, district (city) courts of civil cases considered 1,515 cases on reinstatement in the first instance (and issued decision). As for 2019, this figure was 1,658 cases.

In fact, number of cases in the inter-district, district (city) courts of civil cases, which are decided in the first instance, has been reducing from year to year. The figure was 184,800 cases in 2018, 160,830 cases in 2019, which means a decrease by 23,970 cases [2. 3].

This demonstrates the urgency of improving the legislation on ensuring the effective protection of the labor rights of the parties to the employment contract, as well as the study of the procedural features of court proceedings on reinstatement.

The forms of protection of the rights of the parties enshrined in the civil procedure legislation, which determine the procedure for consideration and resolution of cases on reinstatement, are based on the equality of the subjects of legal relations and which belongs to the specifics of civil law. Although the parties (the employer and the employee) are recognized as equal in labor relations, in the course of litigation of labor cases in practice, there arise issues related to the inequality of the parties to the employment contract.

Such circumstances are obvious particularly in the process of identification of evidence that is important for resolving a labor dispute, their submission to the court, the identification of witnesses in the case, their impartial explanations and testimony. In this regard, one of the leading scholars on labor law M.Yu.Gasanov, said that 'the stability of society depends in many respects on the success of the balance between the interests of employees and employers in the labor legislation' [3. 30]. Therefore, in order to

consider and resolve cases on reinstatement in a lawful and fair manner, it is proposed to improve not only the Civil Procedure Code, but also the Labor Code, strengthening additional norms to protect the rights of employees.

THE MAIN FINDINGS AND RESULTS

For instance, some legal scholars, in particular V.I. Martynenko, suggest that the the burden of proving should be on employer in all types of labor cases in order to eliminate the problem of inequality in practice in the court proceedings on labor cases [4. 7-10]. In this respect, M.M. Mamasiddikov also focuses on this issue in his works. According to him, the employer has more opportunities to gather evidence, s/he can create a database of evidence on labor disputes, and the employee is subordinate to the employer both in terms of service and finance, and that this fact is evident in court proceedings, especially if the employment contract with the employee has not been terminated. Thus, the scholar suggests that the legislation should provide for certain benefits to employees in this regard.

Article 15 of the Civil Procedure Code (CPC) stipulates that the court has the right to take measures in accordance with the law to determine the facts of the case, the rights and obligations of the parties in a comprehensive, complete and impartial manner, not limited to the materials and explanations provided. What is more, the court shall explain to the persons involved in the case their rights and obligations, warn them of the consequences of taking or not taking procedural action, and render to persons participating in case assistance in implementation of their rights.

However, the court, to determine the actual circumstances in reinstatement cases, should be able to gather evidence on its own initiative in order to provide additional opportunities for the employees, in particular, for the plaintiffs. The court is obliged to take all measures in accordance with the law to comprehensively, completely and impartially determine the the legal facts that are important for the case, as well as consider the rights and obligations of the plaintiffs in this category of cases.

For this purpose, the court is supposed to be active in collecting and examining evidence on its own initiative, assisting the parties in exercising their rights by explaining their rights and obligations, in particular the obligation to present evidence and the right to participate in their examination [5. 120]. According to Sh.Sh. Shorahmetov, the peculiarity of civil proceedings is that the courts have the right not only to evaluate evidence presented by the parties and other persons involved in the case, but also to collect evidence on its own initiative to determine the objective truth [6. 168].

D.A. Fursov noted that the court is obliged to assist the parties in determining the evidence and facts of the case, and stated that "in any case, the court should direct and supplement the activities of the parties to the dispute, but not allow them to perform their duties temporarily or conduct investigative actions" [7. 430].

It should be noted that the jurisdiction of the court in proving the case circumstances is different and specific in the legislation of each state.

For instance, in Germany, the court is obliged to assist the parties in providing all the evidence to substantiate the substantive and procedural facts of the case by filing a claim (§ 142 - 142, 146 Zivilprozessordnung). The court is

also entitled to require the parties to provide additional evidence on its own initiative

(§ 273 Zivilprozessordnung).

In Italy, the judge is authorized to set an additional time limit for the submission by the plaintiff of new evidence or a list of evidence, not included in the initial statement of claim (article 184 Condice di procedura civile). In addition, the judge has the right to ask the parties questions, appoint an expert, inspect the person and request any information in order to determine the location of the property (articles 117, 118, 191 Condice di procedura civile). In Belgium, the court has the right, on its own initiative, to verbally question a witness in order to establish the facts of the case, to require the parties to appear in person for an explanation, and to send inquiries about their place of residence (art. 916, 992, 1007 Code Judiciare) [8. 150, 199, 295, 334].

It is evident that according to civil procedural legislation of European countries the judge has broad powers to proof, in particular, to gather evidence in a case. The Committee of Ministers of the Council of Europe adopted a number of recommendations for the improvement of justice in civil and commercial matters (Recommendation No. 81 (7) dated 14 May 1981, Recommendation No. 95 (5) dated 7 February 1995, Recommendation No. 84 (5) dated 28 February 1994) and the Principles of Civil Procedure [9], the general direction of which is to simplify court proceedings and increase their accessibility, flexibility, speed and reliability. These recommendations reflect the court's active authority to gather evidence in the case.

For example, Recommendation 84 (5) states that "The court should, at least during the preliminary hearing but if possible throughout the proceedings, play an active role in ensuring the rapid progress of the proceedings, while respecting the rights of the parties, including the right to equal treatment. In particular, the court should have powers to order the parties to provide such clarifications as are necessary" (Principle 3).

Notably, the inequality of opportunities for litigation in employment cases can also be expressed by the fact that witnesses in this category of cases may be mainly managers of different levels, specialists, accountants and other employees working in the organization. In most cases, the employer will try to substantiate his/her objections to the employee's claim in court with the testimony of the above witnesses who are subordinate to the service. Because it is natural that almost all individuals who witness the current situation in a labor dispute are under the influence of the employer. It is clear that other employees are reluctant to testify against the administration for certain reasons.

The analysis indicates that our national Labor Code does not contain a special norm that determines the procedure and deadline for the employer to provide other documents related to employment to the employee. Taking into account the fact that the period for an employee to apply to the court on reinstatement is one month only, that is, a very short time, and to ensure that the employee has the same opportunity as the employer to collect evidence on the case, we propose a supplement to the Article 108 of the Labor Code in the following content: based on the written application of the employee (including former employee), the employer is obliged to submit a copy of the employment-related

documents not later than three days from the date of submission of the application (a copy of the employment order, transfer orders, workbook or a copy of the workbook, salary statement, a copy of the order on termination of the employment contract, etc.), and the copies of these documents must be approved in the prescribed manner and provided to the employee at no cost.

Cases are initiated in civil proceedings mainly on the basis of applications from persons who have applied for protection of their rights or legitimate interests.

Based on the reports of the Prosecutor General's Office in this area [10], during the past period, a total of 1,742 civil cases of this category were heard in the courts, of which 1,738 or 99.7% were attended by prosecutors.

Of these, 761 civil cases were satisfied, 842 were rejected, 118 were terminated, 472 were considered on appeal, 80 decisions were annulled or changed.

With regard to the appellate or annulled court decisions, 59 were due to prosecutorial protests.

In respect of cassation instance, 233 civil cases were considered in cassation, of which 43 decisions were annulled or changed.

On the basis of prosecutorial protests 35 court decisions were annulled or changed in the cassation instance.

For instance, the Yangikurgan inter-district court found that the Chartak district branch of JSC "Halk Bank" did not obtain the consent of the trade union committee, based on the Article 100, Part 2, Clause 1 of the Labor Code, concerning the dismissal of S.Kuchkarov - the chief specialist of the bank's retail services department (on 01.06.2019). However, despite the above violation of LC rules, the Yangikurgan court decided (on 16.08.2019) to reject the application of S. Kuchkarov on reinstatement.

Another example is that, N.Yusupova and others, who were hired by Ideal Nukus LLC for an indefinite period of time, were illegally dismissed on the grounds that their employment contracts had expired, but the Nukus inter-district court rejected their claims for reinstatement.

A similar situation was allowed by the inter-district courts of Samarkand city (2), Asaka, Khatirchi, Mirzo Ulugbek, Mirabad, Margilan and Gulistan (1 each).

According to Article 5 of the Civil Procedure Code of Uzbekistan, a civil case is formulated by the court on the basis of cliaimed documents (by court) and court documents submitted or requested by the parties to the case, as well as other participants in civil proceedings.

It should be noted that, there are individuals in the process who enter the process initiated by other parties and are as interested as the parties in resolving civil cases. These individuals are referred to as third parties in civil proceedings because they are the third party on the account after the plaintiff and the defendant.

According to the definition given by the legal encyclopedia, third parties are persons who protect their rights and legally protected interests in a civil case initiated by other persons (parties) in civil proceedings [11. 399].

Pursuant to the Article 39 of the CPC, third parties are considered (included) as persons

involved in the case. According to Sh.Shorakhmetov, the interests of such persons are considered to be legal interests, as the court decision on the case affects their civil substantive rights to some extent, as a result of which the case is resolved in court, they have certain rights or obligations, so they may enter (interfere) with a civil case initiated for defense purposes or be involved by a court to participate in the initiated proceedings [12. 66].

Third parties involved in civil proceedings are divided into the following two types, depending on the content of their interest in the resolution of the case and the consequences of the decision on the case:

1) Third parties who file an independent claim regarding the subject of the case;
2) Third parties who do not file an independent claim regarding the subject of the case.

The civil procedure legislation of our country provides for the involvement of third parties in the case of reinstatement, among the peculiarities of involvement of third parties in the judicial process.

In particular, according to **Article 184 of the Civil Proceedure Code**, in cases of reinstatement of employees whose employment contract was illegally terminated or who illegally transferred to another job, the court must involve on its own initiative the official who ordered the termination of the employment contract or transfer to participate in the case as a third party.

If the court finds that the termination of the employment contract or transfer to another job was made in clear violation of the law, in the process itself the guilty official is obliged to compensate the organization for damages caused by mandatory absense from work or low-paid work. In such cases, the amount of the reimbursement from the official shall be determined by the labor legislation [13].

According to M.M. Mamasiddikov, the intended purpose of the introduction of this rule was the following: when the court finds that the termination of the employment contract or transfer to another job was clearly unlawful, in the same process, the court shall impose the obligation on the official to compensate the employer for the damage caused as a result of which the official had to pay the employee for a compulsory absense from work or for the given low-paid job [14. 28. 32].

In our opinion, to protect the labor rights of employers and employees, as well as the public interest, the court, without the request of other persons, on its own initiative, can involve the official of the enterprise to participate in the work and may impose an obligation on the him/her to compensate the employer for the damage caused in connection with the payment of wages for the period of compulsory termination.

This responsibility of the official before the employer is not a form of civil liability, but a type of independent liability provided for in labor law. In resolving this issue of liability, the courts must pay special attention to the fact that the termination of the employment contract or transfer to another job occurred only as a result of clear violation of the law [15].

Involvement of officials in the process of labor cases as a third party is an important factor in the effective fight against related vilations, grave violations of labor legislation by officials,

as well as for rapid and complete resolution of cases.

Involvement of officials in the process as a third party in labor matters, in turn, is an important factor in the rapid and complete resolution of labor disputes, an effective fight against gross violations of labor legislation by officials.

In practice, some measures that impose responsibility on the officials of the organization can be the involvement in the process of officials who have illegally terminated employment contract or officials who have ordered the transfer to another job in disputes on reinstatement and rules on the imposition of material liability on them.

However, it would not be an exaggeration to say that the fact that labor legislation imposes restrictions on the liability of an official guilty of illegal termination of an employment contract or illegal transfer of an employee to another job is a factor in the increase of such cases in practice.

Practically, according to Article 274 of the LC, the amount of compensation paid by an official to compensate the damage to the employer should not exceed the amount of the official's three-month salary.

Here arises a question that why the material liability of an official is limited by law. The legal literature published in the former Soviet Union states that the limits of the financial responsibility of officials before the employer stem from the purpose of this responsibility, and that the financial responsibility of officials consists in the performance of more educational tasks [16]. However, in today's market economy, these ideas do not meet today's requirements. This norm in the national Labor Code was present in the labor legislation of the former Soviet Union, and now such a norm is completely abandoned in the labor and civil procedural legislation of the CIS member states. That is, in such cases officials are subject to full financial responsibility.

CONCLUSION

In conclusion, it is necessary to strengthen the liability of officials who illegally dismiss employees or transfer them to another work. This helps to prevent violations of labor legislation, illegal dismissals and transfers, as well as harm to employers. The official found guilty of illegally terminating an employment contract or illegally transferring an employee to another job must be subject to full financial responsibility.

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