

# Employment Discrimination on Civil Servant Recruitment

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**Abstract**—Employment right is linked to the people's livelihood in our society. As a most important and representative part in the labor market, the employment of public servants is always taking much attention. But the discrimination in the employment of public servants has always existed and, to become a controversy in our society. The paper try to discuss this problem from four parts as follows: First, the employment of public servants has a representative status in our labor market. The second part is about the discrimination in the employment of public servants. The third part is about the right of equality and its significance. The last part is to analysis the legal predicament about discrimination in the employment of public servants in China.

**Keywords**—Discrimination, Employment of public servants, Right of labor.

## I. INTRODUCTION

**I**N the modern society with the shadow of the financial crisis, Employment has obviously become a major thing closely related to people's livelihood. A good job, as a hope of a new life, will directly determine the social status of people in the society. Therefore, fairness and equality in employment are the core issue for a society. However, in China, ever since laborers enter into the talent market, they would suffer employment discrimination. Employment discrimination in recruiting public servants as main forces of recruiting labors has become a hot topic.

## II. REPRESENTATIVENESS OF RECRUIT OF PUBLIC SERVANTS IN EMPLOYMENT

The recruit of public servants has been quite popular in the employment market. In recent years under the shadow of the financial crisis, public servants have become the first choice of employment for many unemployed persons, especially for liberal arts graduates because of high wages, good benefits, stability and small pressure. A female white-collar worker quit her job providing her two hundred thousand a year. A PhD in America had fled to China for three times to take civil service examinations. Such kinds of news have been pervasive. The author, as a student majoring in law, has participated civil service examinations at all levels. Some classmates of the author even had attended in civil service examinations for almost ten times. According to statistics provided by the Ministry of Personnel, in 2013, 1.383million people applied to attend the national civil service examination. Respectively 4584 and 4125 people competed with each other to gain a

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position in China Disabled Persons Federation and Wuxi Customs as two positions among the most competitive ones in the national civil service examination.

Recruit of national public servants has special representative and occupies an important position in the employment market, which is mainly reflected by following aspects:

### A. Particularity of the Subject in Recruit of Public Servants

State organs, as the subject of recruiting public servants, serve as the employment policy-makers and specific executors of employment policies and regulations. Moreover, state organs are also employers. Multiple identities of them make recruit of public servants become the focus in the employment market and the object to follow in the recruit of other employers. Owing to administrative power state organs assumed, state organs as the subject recruiting public servants occupy a superior position in the recruit of public servants. The equal rights of employment for people to be recruited are of great importance during this process.

### B. Universality of the Territorial Scope and People Involved in Recruit of Public Servants

Recruiting posts of national public servants are provided by provinces all over China, from Beijing as the capital to Tibet in the west of China. Recruiting posts of local public servants mainly provided state organs other than provincial and ministerial-level organs all over China from coastal cities to small border counties.

Similarly, a large number of people get involved in the recruit of public servants. 230,000 people applied to the civil service examination in 2003. However, only 5,400 public servants posts were provided. Till 2005, the number of people taking the civil service examination was up to as high as 540,000 while this number reached 640,000 in 2008 and sharply increased to 1,050,000 in 2009. From the data provided above, the huge number of people and the large territorial areas that have been involved in the civil service examination and the great impact of the recruit of public servants can be revealed.

### C. Particularity of Posts and Basis for Recruiting Public Servants

Public servants are staff of state organs which is different from the common enterprises. They directly get involved in the operation and management of the state. Recruiting personnel would become the reserve army for national staff members. Therefore, equality in recruiting public servants directly determines the quality and ability of national staff members. Moreover, in China, the Labor Law of the People's Republic of China, which is applicable to the recruit of ordinary laborers, is generally unsuitable to the recruit of public servants which has

its own recruiting basis. Before 2006, the recruiting basis for public servants was Provisional Regulations for Recruiting Public Servants. However, after that, it has become the recruiting basis of public servants. The particularity of the recruiting basis in the Civil Law makes research on discrimination in recruiting public servants quite meaningful.

State organs, as the subject in recruiting public servants, have multiple identities and great power. Moreover, the recruit of public servants get involved with a large number of people and territorial scope and posts and recruiting basis of public servants are quite special. Due to these factors, recruit of public servants occupies a special and representative position in the employment market. Therefore, research on employment discrimination in recruiting public servants is of great significance.

### III. Pervasiveness of Employment Discrimination in Recruiting National Public Servants

As mentioned above, employment discrimination in recruiting public servants is of great importance. However, employment discrimination is quite pervasive in recruiting public servants. Employment discrimination refers to the fact that in the recruiting, factors such as the identity, gender, birthplace, race, age, appearance and others, rather than labor capacity, work experience, job level, professional skills and other skills that people need to have in some posts, are taken as conditions and basis in recruiting employees. Different people receive different treatments in the employment market. In other words, limitations are imposed on few laborers in certain groups to get engaged in some job fields, thus infringing fundamental rights of these laborers [1].

Employment discrimination can be divided into direct and indirect discrimination [2]. Direct discrimination refers to explicitly and directly unreasonable discrimination against laborers. For example, the recruitment advertisements make it clear that they refuse to recruit the female and the married. Indirect discrimination refers to the fact it seems that the recruit is fair and equitable, it gives unreasonable differential treatment. For example, it seems that there is no limitation on gender in recruiting employees. However, all employees hired are males, while excellent females are ignored. Since indirect discrimination is inexplicit, it is quite difficult to identify indirect discrimination. In today's China, negative influence produced by direct influence is far greater than that by indirect discrimination. Therefore, in this paper, direct discrimination in employment market is taken the research object [1].

In recruiting public servants, direct employment discrimination is ubiquitous. Following aspects are taken as standards further dividing direct employment discrimination. Concrete analyses are made of these discriminative phenomena.

#### A. Gender Discrimination

The author has participated in the civil service examination for about 10 times. The author has passed the written examination for five times. Gender discrimination cannot be reflected in the written examination. However, in the oral

examination, gender discrimination is quite common. Employers believe that females bear both the family responsibilities (such as bearing children) and social responsibilities. Most females will continue to work after they get married. However, people's energy and time is limited, so it is quite difficult for females to put all their energy into work. Due to this, in the employment market, employers show special preference to males.

#### B. Age Discrimination

According to all the civil service recruitment notices, people apply to participate in the civil service examination should be under 35 years old. More strict requirements are made for different positions in terms of people's ages. For example, among 1,147 posts provided by the central authorities in the national civil service examination in 2005, there were 90 posts which only recruited people under 35 years old[1]. post only recruit people under 33 years old; 77 posts only recruited people under 33 years old; 11 posts only recruited people under 28 years old; 1 post only recruited people under 25 years old. In today's China when there is no age discrimination in the college entrance examination, it is difficult to say that these age limitations are reasonable. It is quite obvious that the age limitation has prevented a lot of excellent people from entering the group of public servants.

#### C. Discrimination on Education Background

In the recruit of public servants, people should at least receive post-secondary education, so as to be qualified to take the civil service examination. Some posts even require people which have received better education. For example, in 2005, 46% of posts provided by central organs only recruit people who have at least gained the bachelor degree; 18% of posts require the master's degree; 1% of posts require the doctor's degree[1]. Inevitably, students including me who have good education background, as beneficiaries of such as discriminatory provision, would support it, since we believe that educational background is the simplest and most effective standard to ensure the quality of talents. However, at the same time, we should also reflect on the problem that whether a college students is bound to be more excellent than a secondary student. Worse still, since people with better education background have high requirements for their jobs, few people apply to be public servants in remote areas.

#### D. Discrimination on Marital Status

The requirement to be unmarried has increasingly become a hot potato that job seekers face in the employment market. According to requirements, many posts of public servants only recruit unmarried people. Some posts even only recruit unmarried people under a certain age. For example, a post only recruits unmarried people under 30 years old. According to legal provisions in China, females can get married when they are 20 years old while males can get married when they are 22 years old. Therefore, it can be seen that it is quite incredible and unreasonable for this post to only recruit 30-year-old unmarried people. Moreover, recruiting agencies have no scientific basis to prove that the marital status has a direct impact on people's

performance at work.

#### *E. Height Discrimination*

In the civil service recruitment, males are required to be higher than 160cm while males should be higher than 150cm. For some posts, it is quite common that higher requirements are made to people's height. For example, in the announcement of public servants in Wuhan in 2008, posts provided by the Wuhan Procuratorate and the Wuhan Court only recruited males who were higher than 168 cm and females higher than 158cm. It is understandable that higher height requirements are made to recruit bailiffs. Height requirements were made for ordinary posts in the Wuhan Procuratorate and the Wuhan Court. These requirements were discriminatory provisions, since the superiority in height does not necessarily mean a good performance in these posts. The "Sichuan University Students Jiang Taoqi's Accusation of People's Bank of China" is a typical case of height discrimination. Although the recruit of People's Bank of China is not the recruiting of public servants, Jiang Taoqi's case can be taken as a representative case of height discrimination in the public servant recruiting, since the recruiting method of People's Bank of China is similar to that of the public servants.

#### *F. Discrimination on Household Registration*

A main reason of discrimination on household registration is to protect local students and people. In the recruitment notice, registered permanent residence of some places is taken as an essential requirement for people applying to participate in the civil service examination. Moreover, some even ask people to make on-site registration when they apply to attend the civil service examination, which greatly limits non-native students. Many job seekers who originally plan to apply to take the exam give up, due to the round-trip costs. These unreasonable and narrow-minded requirements make discrimination in the recruiting of public servants become more intolerable.

#### *G. Discrimination on Physical Conditions*

In the Article XI of the Civil Service Law, public servants are required to "own normal physical conditions to perform their duties", which replaces the requirement to "be in health" in the Provisional Regulations on the Public Servants. In this way, requirements for the physical conditions of people who apply to attend the civil service examination are more explicit. Progress made in this respect has a great relationship with the case of "discrimination on hepatitis B patients" in Wuhu and "symmetrical breasts" in Hunan Province which have aroused great repercussion. However, in practice, the phenomenon that excessively high requirements are made for physical conditions of public servants in the physical examination still exists. For example, high requirements are made for visual acuity and audition. According to international standards, as long as employees' physical conditions can enable themselves to normally perform employment duties, without performing any negative impact on their work and people work with them, they should be considered to meet the requirements [3].

Employment discrimination in recruiting public servants also includes discrimination on graduate schools, dialect

discrimination and so on [4].

#### IV. EQUAL EMPLOYMENT RIGHTS

Due to its particularity and representativeness, recruit of public servants, as a form of employment in China, has far-reaching influence. Therefore, discrimination in the recruit of public servants catches the attention of the public. Employment discrimination in recruiting public servants directly infringes the equal employment right of people.

The right to work is a kind of social rights. Social rights, as a hypernym of the right to work refers to rights that citizens use to ask the state to actively take measures to intervene in the economy, social life in accordance with the development status of the society, so as to promote personal freedom and happiness and make individuals lead a healthy and dignified life in the economic, political, social and cultural fields [3]. Social rights require states to adopt positive measures to provide individuals with some certain services and some kind of convenience, with the premise that rights of citizens are respected and protected. Social rights were produced in the 20th when limitations were imposed on traditional absolute freedom. According to social rights, national laws no longer take "people" as the purpose, but pay more attention to the fairness and freedom of the whole society.

The right to work, as a basic social right, has the same kernel with social rights, requiring the state to protect citizens' basic rights to work and take positive measures to enable citizens away from forced labor, slavery and unequal treatment. The right to work, in its narrow sense, refers to the fact that people have the rights to work, have freedom to choose their work, enjoy equal and favorable conditions of work and enjoy protection against unemployment. The right to work, in its broad sense, covers the right to freely choose jobs, the employment right (that is, be provided with jobs), employment protection rights (rights to be under protection against arbitrary or obviously unfair dismissal), the right to get free employment services, equal pay for equal work, the right to gain fair labor payment, the right to strike and other rights [5].

The right to equally choose jobs without discrimination is a kind of rights to work in the narrow sense. Equally choosing jobs is an important right among rights to work. It determines whether people can equally enter into the labor market, which is the first step to realize equal rights to work. Employment discrimination is produced by employers when they classify jobs into different kinds in an improper way or by taking factors that would affect people's performance at work into account, for the sake of their own interests or other factors. In this way, some people suffer unequal treatment and infringement in their basic rights to work. In the recruiting of public servants, as mentioned above, discrimination is ubiquitous. Candidates of public servants suffer discrimination as early as they apply to take civil service examination. The threshold for them to enter the group of public servants has been unreasonably heightened. Their basic rights to work have been violated. The recruit of public servants, as a special and representative way of employment, has aggravated the negative impact of discrimination. State organs, as special employers, should have

become a good example and representative who is law-abiding and have been taken as a good example for other employers. However, the discrimination of state organs in recruiting public servants by trampling on laws bears some responsibilities in the generation of pervasive employment discrimination in China's employment market.

#### V. LAW PREDICAMENT OF EMPLOYMENT DISCRIMINATION IN RECRUITING PUBLIC SERVANTS

In China, laws involving equal employment of public servants are mainly as follows.

##### A. Constitution

According to the Article 33 of the Constitution, "citizens of People's Republic of China citizens are equal before the law". According to the Article 42, citizens of People's Republic of China citizens have the right and duty to work". According to the Article 48, women of People's Republic of China citizens have the equal rights with men in political, economic, cultural, social and family aspects; the state protects the rights and interests of women, realizes the equal pay for equal work among men and women and cultivates and selects women cadres". These provisions in principle also cover citizens' equal employment rights. Public servants, as a group of citizens, also enjoy the equal employment rights.

##### B. Civil Service Law

The Civil Service Law mainly takes the public servants as the adjustment object. According to the Article 21, "to recruit non-leadership public servants whose levels are under the principal staff members and other public servants at the equivalent levels, methods to hold public and strict examinations, provide equal competition environment and enroll only those who are outstanding are adopted". This Article is developed to impose limitations on the recruit of public servants mentioned in this paper. In this Article, "equal competition" is put forward. That is to say, provisions are made for the equal employment rights of citizens. However, it does not discuss about the employment discrimination.

##### C. Labor Law

According to the Article III of the Labor Law, "workers enjoy equal rights in employment and choosing of their jobs, the rights to gain labor payment, the right rest and have vacation, the right to enjoy protection of work safety and hygiene, the right to receive vocational skills training, the right to enjoy social insurance and welfare, the right to ask for treatment of labor disputes and other labor rights according to legal provisions. Rights mentioned in the Article III are involved with equal employment rights. However, in fact, public servants are not the object which is adjusted by the Labor Law. This is a quite peculiar phenomenon, since public servants belong to laborers, but they do not follow the adjustment of the Labor Law. Even when public servants follow the adjustment of the Labor Law, employment discrimination in the recruit of public servants cannot be eliminated by the Labor Law, because the Labor Law only provides provisions in principle.

##### D. Employment Promotion Law

According to the Article 3 of the Employment Promotion Law, "according to law, workers enjoy equal rights in employment and self-employment. In the employment market, laborers suffer discrimination due to their nationality, race, gender and religion". The appearance and implementation of the Employment Promotion Law marks the official formulation of provisions to forbid employment discrimination in China's law [6]. However, these listed provisions not only narrow the definition to discrimination, but also lack practical operability.

#### VI. CONCLUSION

Thus it can be seen that laws developed to eliminate employment discrimination in the recruit of public servants in China are rough and tumbled. Exclusive provisions are quite few. Several provisions to eliminate employment discrimination are all in principle, without applicability. Regulations for employment discrimination are quite limited. Worse still, in China, lawsuits made against unconstitutionality are not under the jurisdiction. Therefore, when people suffer employment discrimination in the recruit of public servants, which is quite common in real life, people do not have any channels to appeal their rights. People cannot ask for labor arbitration, or make labor lawsuits. They also cannot bring administrative lawsuits (administrative proceedings only accept cases related to a specific administrative act), let alone making lawsuits against unconstitutionality. If an event, which is quite important for parties, does not get a good solution, it would be detrimental to the harmonious development of the country. At present, scholars issue desperate appeal to develop anti-employment discrimination law. As far as the author is concerned, it is quite necessary to enact an anti-employment discrimination law to solve problems caused by the discrimination in the employment market, so as to provide a healthy employment environment. At the same time, the author also declares that civil servants should not be an object neglected in employment discrimination; problems caused by employment discrimination in recruiting public servants should be part of the anti-employment discrimination law; owing to the particularity of public servants as an occupation, public servants should be attached great importance in developing provisions in anti-employment discrimination law.

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