J.Y. Interpretation No. 736 (March 18, 2016)*

Public School Teachers' Right to Judicial Remedy Against Infringements by Schools Case

Issue

Is Article 33 of the Teachers Act unconstitutional? Does a teacher have the right to bring an administrative suit against his/her school's specific administrative actions?

Holding

Based on the constitutional principle that where there is a right, there is a remedy, a teacher who finds his/her right or legal interest has been infringed upon by a specific administrative action of his/her school is entitled to file a lawsuit in court either pursuant to the Administrative Court Procedure Act or the Code of Civil Procedure. Article 33 of the Teachers Act reads:

> If a teacher is unwilling to file an administrative complaint, or is not satisfied with the outcome of an administrative complaint and a review of administrative complaint, he/she may, based on the nature of the case, file a lawsuit according to law or seek remedy in accordance with the Administrative Appeal Act, the Administrative Court Procedure Act, or other laws protecting the rights of teachers.

This Article merely prescribes the remedial procedures when a teacher finds his/her right or legal interest has been infringed upon. It does not restrict the

* Translation and Note by Ed Ming-Hui HUANG

right of a public school teacher to initiate an administrative suit and thus does not violate the protection of the people's right to judicial remedy under Article 16 of the Constitution.

Reasoning

[1] Article 16 of the Constitution guaranteeing people the right to judicial remedy means that a person shall have the right to judicial remedy when his/her right or legal interest has been infringed upon. Based on the constitutional principle that where there is a right, there is a remedy, when a person's right or legal interest has been infringed upon, the State shall provide such person an opportunity to institute a court proceeding, to request a fair trial in accordance with the due process of law, and to obtain timely and effective remedies. Restricting the right to remedy simply on the basis of status or occupation is constitutionally impermissible (*see* J.Y. Interpretations Nos. 430 and 653).

[2] Article 33 of the Teachers Act reads:

> If a teacher is unwilling to file an administrative complaint, or is not satisfied with the outcome of an administrative complaint and a review of administrative complaint, he/she may, based on the nature of the case, file a lawsuit according to law or seek remedy in accordance with the Administrative Appeal Act, the Administrative Court Procedure Act, or other laws protecting the rights of teachers.

This Article merely prescribes the remedial procedures when a teacher finds his/her right or legal interest has been infringed upon. It does not restrict the right of a public school teacher to initiate an administrative suit and thus does not violate the protection of the people's right to judicial remedy under Article 16 of the Constitution. A teacher who finds his/her right or legal interest has

been infringed upon by a specific administrative action of his/her school (such as citation of absence without valid reasons, docking of pay, no pay raise after annual performance review, teaching evaluation, etc.) is entitled to file a lawsuit in court either pursuant to the Administrative Court Procedure Act or the Code of Civil Procedure, in the same manner as ordinary people. Thus the constitutional principle of "where there is a right, there is a remedy" will be fulfilled. It goes without saying that the court reviewing such cases should, to an adequate extent, defer to the judgment made by the school based upon its expertise and familiarity with the facts (*see* J.Y. Interpretations Nos. 382 and 684).

[3] One of the petitioners also petitions for overturning or supplementing J.Y. Interpretation No.382, which dealt with the issue of the remedy for students who are subject to restrictive actions taken by a school. The Supreme Administrative Court Judgment 100-Pan-1127 (2011) quoted J.Y. Interpretation No. 382 simply for clarifying the legal status of a public school, an institution established by governments at various levels according to law to carry out educational functions and possessing the status of an administrative agency. It did not apply the said Interpretation to decide whether public school teachers can sue against specific actions by their schools. Thus, J.Y. Interpretation No. 382 may not be challenged in this petition. The petitioner also alleges that Article 2, Paragraph 3, Subparagraphs 3 and 6 of the Guidelines for Evaluating Teachers of National Cheng Kung University are in conflict with J.Y. Interpretation No. 432 because the phrases "outstanding contribution" and "specific and distinguished (achievement)" of the qualifications for exemption from merit evaluation are void for vagueness. In addition, a professional judgment made by the department's faculty evaluation committee may be overturned, as its evaluation must be reviewed by the faculty evaluation committees of each college and the University. Such review procedure is inconsistent with the protection of

academic freedom and the ruling of J.Y. Interpretation No. 462. We find this part of the petition has failed to elaborate how the said Guidelines and procedure contradict the Constitution. Therefore, these two parts of the petition were not duly submitted under Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act and are dismissed in accordance with Paragraph 3 of the same Article.

Background Note by the Translator

The petitioner Man-Ting TSAI is a teacher at Taoyuan Municipal Tsaota Junior High School. In taking leave, he did not comply with the Regulations for Leave-Taking of Teachers, so the school had him registered as absent without valid reasons, docked his pay, and placed him in the same pay grade at the annual performance review. The petitioner filed an administrative complaint and a review of administrative complaint against the three actions, and both the complaint and the review of complaint were denied in succession. Then, he filed an administrative suit, but the Taipei High Administrative Court, in its Order 99-Su-761 (2010), dismissed the case because it found the petitioner, as a public school teacher, lacked standing in suing against the three actions. He filed a motion to set aside the order made by the Taipei High Administrative Court and was again denied by the Supreme Administrative Court Order 100-Tsai-974 (2011). The petitioner then petitioned the Constitutional Court for constitutional interpretation, claiming that Article 33 of the Teachers Act, which had been applied in the aforementioned Supreme Administrative Court Order, was unconstitutional.

The petitioner Yao-Chuan TSAI is a professor at National Cheng Kung University. When his application for exemption from evaluation was rejected, he filed a complaint to the faculty evaluation committee of the University, but the complaint was deemed groundless. He then filed an administrative

complaint and then a review of administrative complaint pursuant to the Teachers Act, and both were denied in succession. Afterward, the petitioner initiated an administrative suit, but the Kaohsiung High Administrative Court, in its Judgment 98-Su-603 (2009), dismissed his claim because of lack of legal grounds. He filed an appeal to the court of last resort, but again was denied by the Supreme Administrative Court Judgment 100-Pan-1127 (2011). The petitioner then petitioned the Constitutional Court for constitutional interpretation, claiming that Article 2, Paragraph 3, Subparagraphs 3 and 6 of the Guidelines for Evaluating Teachers of National Cheng Kung University, which had been applied in the aforementioned Supreme Administrative Court Judgment, were unconstitutional. The petitioner also petitioned for overturning or supplementing J.Y. Interpretation No. 382.

In the past, students and the State were subject to the "special power relationship," a legal doctrine denying students the right to institute legal proceedings in court against the State. The relationship between public school teachers and the State was the same. J.Y. Interpretation No. 684 struck down the doctrine by stating that there is no need to place special restrictions on students' rights to judicial remedy. Therefore, a student whose right has been infringed upon is allowed to bring an administrative appeal and suit. And J.Y. Interpretation No. 736 kept on consolidating such a breakthrough with respect to the protection of public school teachers' basic rights. Following is an excerpt of the reasoning of J.Y. Interpretation No. 684:

> With regard to the issue of whether a student suffering from a restrictive action taken by his/her school may file an administrative appeal and administrative suit against that action, this Court has laid out in J Y. Interpretation No. 382 that it shall depend on the nature of the action. If the action is made pursuant to guidelines for student

registration or other rules for reward and punishment and is to dismiss a student or is of a similar effect so as to deprive a student of his/her status as a student, thus hindering his/her opportunities to receive education, the action is deemed to have a significant impact on his/her constitutional right to receive education. Hence, such action is an administrative disposition as referred to in the Administrative Appeal Act and the Administrative Court Procedure Act. Therefore, the student shall be entitled to file an administrative appeal and administrative suit against that action. As for actions aiming at maintaining school discipline and essential to achieving the purposes of education without infringing upon students' right to receive education (such as demerit or reprimand), students are not allowed to file any administrative appeal and administrative suit. They are only allowed to seek remedies through the internal complaint processes within the school. Nevertheless, based on the mandate under Article 16 of the Constitution that where there is a right, there is remedy, when an administrative disposition or other actions made by a university as public authority infringes upon a student's right to receive education or other constitutional rights, the impacted student is entitled to file an administrative appeal and administrative suit, even if the disposition or action is not to dismiss a student or of similar kind. We do not see a need to limit the students' right to file an administrative appeal and administrative suit in such cases. To this extent, the holding of J.Y. Interpretation No. 382 is hereby overturned.

[However,] in light of the principle of university autonomy, the competent authorities and courts which have jurisdiction over the administrative cases brought by university students against the actions

of a university should defer to the professional judgment of the university to an adequate extent (*see* J.Y. Interpretation No. 462).