

J. Y. Interpretation No.707 ( December 28, 2012 ) \*

【Unconstitutional Faculty Case relating to the Regulations for the Compensation of Public School Faculty and Staff 】

**ISSUE:** Is the Formulation of Compensation for Teachers of Public High School and Lower Levels without Reference either to Welfare Laws or to Authorized Orders considered Unconstitutional ?

**RELEVANT LAWS:**

Article 15 and Article 165 of the Constitution ( 憲法第十五條、第一百六十五條 ) ; J. Y. Interpretations No. 289, No. 443, No. 614, and No. 658 ( 司法院釋字第二八九、第四四三號、第六一四號、第六五八號 ) ; Article 19, Article 20, and Article 39 of the Teachers' Act (Promulgated on August 9, 1995) ( 教師法第十九條、第二十條、第三十九條，八十四年八月九日制定公布 ) ; Article 8 Paragraph 1 and Article 17 of the Educational Fundamental Act (Promulgated on June 23, 1999) ( 教育基本法第八條第二項及第十七條，八十八年六月二十三日制定公布 ) ; Partial regulations relating to the teachers of public high school and lower levels within the “Regulations for the Compensation of Public School Faculty and Staff” (including its Annex and Standard Table for

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\* Translated by Marie C.Y. Li.

\*\* Contents within frame, not part of the original text, are added for reference purposes only.

the Compensation of Public School Faculty and Staff) amended by the Ministry of Education on December 22, 2004 (公立學校教職員敘薪辦法九十三年十二月二十二日修正發布)。

**KEYWORDS:**

teacher (教師), welfare (待遇), principle of legal reservation (法律保留原則), public Interest (公共利益), significant matter (重大事項), property rights (財產權).\*\*

**HOLDING:** The Ministry of Education amended and promulgated the Regulations for the Compensation of Public School Faculty and Staff (including their Annex and Standard Table) on December 22, 2004. Within the Regulations for the Compensation of Public School Faculty and Staff, the part relating to teachers of public high school and lower levels seems to have violate the principle of legal reservation of the Constitution, and therefore shall be nullified on the date this Interpretation has been announced or at the most three years later.

**REASONING:** Generally speaking, based on the Constitutional principle of legal reservation, even if the

**解釋文：**教育部於中華民國九十三年十二月二十二日修正發布之公立學校教職員敘薪辦法(含附表及其所附說明)，關於公立高級中等以下學校教師部分之規定，與憲法上法律保留原則有違，應自本解釋公布之日起，至遲於屆滿三年時失其效力。

**解釋理由書：**基於憲法上法律保留原則，政府之行政措施雖未限制人民之自由權利，但如涉及公共利益或實

government's administrative measures do not limit the people's freedom and rights, once the said measures involve significant matters such as the public interest or get in the way of a person's fulfillment of his or her fundamental civilian rights, the agency in charge may not codify regulations in associated with the aforesaid measures unless they are formulated according to relevant laws or evident legal authority (see Judicial Yuan Interpretations No. 443, No. 614, and No. 658). Education is the bedrock of a country's societal development, and teachers take upon themselves the mission of nurturing elites for the nation; thus, the virtue or vice of executing educational work is highly pertinent to the results of education as a whole, and this will also indirectly affect people's right to education. For the purpose of allowing teachers to fully commit themselves to their educational work and therefore aim for educational improvements, the government should help to ensure the quality of life and standard of teaching for teachers. Article 165 of the Constitution specifies that our nation ought to secure the life of educa-

現人民基本權利之保障等重大事項者，原則上仍應有法律或法律明確之授權為依據，主管機關始得據以訂定法規命令（本院釋字第四四三號、第六一四號、第六五八號解釋參照）。教育為國家社會發展之根基，教師肩負為國家造育人才之任務，其執行教育工作之良窳，攸關教育成敗至鉅，並間接影響人民之受教權。為使教師安心致力於教育工作，以提昇教育品質，其生活自應予以保障。憲法第一百六十五條即規定，國家應保障教育工作者之生活，並依國民經濟之進展，隨時提高其待遇。教師待遇之高低，包括其敘薪核計，關係教師生活之保障，除屬憲法第十五條財產權之保障外，亦屬涉及公共利益之重大事項。是有關教師之待遇事項，自應以法律或法律明確授權之命令予以規範，始為憲法所許。

tional workers, and to raise their salary or welfare benefits if the nation's economic growth allows it. The degree of compensation shall also be factored in when it comes to judging the full package of the compensation offered to teachers so as to make sure that their standing is protected. This is clearly stipulated in the Constitution, and as long as the compensation is outside of the realm of property rights specified in Article 15, it is deemed to be a significant matter involving the public interest. Consequently, in order to comply with the Constitution, matters relating to teachers' welfare and compensation must be regulated by means of laws or according to orders issued by evident legal authorities.

Only Article 19 of the Teachers' Act has regulations applicable to the compensation of teachers (though the full Act has not yet entered into force). No other Articles of the Teacher's Act nor any other laws have yet codified anything related to the said topic. The Ministry of Education promulgated the Regulations for the Compensation of Public School

有關教師之敘薪，除尚未施行之教師法第十九條規定外，教師法及其他法律尚無明文規定。教育部於六十二年九月十三日訂定發布公立學校教職員敘薪辦法（含附表及其所附說明），嗣於九十三年十二月二十二日修正發布（下稱系爭辦法），作為教師待遇完成法律制定前，公立高級中等以下學校教師（下稱上開教師）敘薪之處理依據（系

Faculty and Staff (including their Annex and Standard Table) on September 13, 1973, and it further amended the said Regulations for the Compensation of Public School Faculty and Staff (hereafter “the Regulation at issue”) on December 22, 2004 as the basis (refer to Article 1 of the Regulation at issue) for handling compensation problems related to teachers of public high school and lower levels (hereafter “the aforesaid teachers”) before any laws covering teacher’s welfare or compensation had been completely enacted. Although the Regulation at issue was intended as a temporary mechanism before the enactment of relevant laws on teacher’s welfare or compensation, an approach of this kind should not arbitrarily be permitted to remain in force for long. The Regulation at issue was promulgated in 1973 and has been in force since then. Within this time, both Article 20 of the Teachers’ Act (promulgated on August 9, 1995, though the Executive Yuan never stated the date at which it should come into force), as well as Article 8 Paragraph 1 of the Educational Fundamental Act (promulgated on June 23, 1999) clearly

爭辦法第一條參照)。按系爭辦法固係教師待遇相關法律制定前之因應措施，惟此種情形實不宜任其長久繼續存在。系爭辦法自六十二年訂定施行迄今已久，其間，八十四年八月九日制定公布之教師法第二十條（尚未經行政院以命令定施行日期）及八十八年六月二十三日制定公布之教育基本法第八條第一項，均分別明定教師之待遇，應以法律定之，惟有關教師之待遇，迄今仍未能完成法律之制定。系爭辦法係規範上開教師薪級、薪額、計敘標準、本職最高薪級以及在職進修取得較高學歷之改敘等事項，事涉上開教師待遇之所得，係屬涉及上開教師財產權之保障及公共利益之重大事項，其未經法律之授權以為依據，核諸首開說明，與憲法上法律保留原則自屬有違。

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state that teacher's welfare and compensation shall be governed by law, but until now this task has not yet been carried out. The Regulation at issue regulates the aforementioned ranking, amount and standard of compensation of a teacher's salary. It also states the highest salary scale according to the teacher's rank and relevant matters regarding changes to the compensation when a higher academic degree has been achieved while one is still on the job. Due to the importance of the above regulatory items, and their being related to the welfare benefits and earnings of teachers, these relevant provisions are closely bound to the security of teachers' property rights and to the public interest. Thus, if any incident involving these provisions was to be approved and publicized without any authorization in law, there is then an obvious violation against the principle of legal reservation within the Constitution.

The petitioner for this Interpretation merely argued about the part that was based upon Article 5 Paragraph 1 of the Standard Table for the Compensation of

聲請人雖僅就公立學校教職員敘薪標準表說明第五點第一項關於上開教師在職進修取得較高學歷改按新學歷起敘時，不採計進修期間內服務成績優良

Public School Faculty and Staff (hereinafter “Standard Table at issue”), which was relevant to the abovementioned matter regarding change of compensation when a teacher has received a higher degree while on the job, and the said compensation change was recalculated based on the higher academic degree. Based on the Standard Table at issue, the petitioner challenged that the Authority, while making a change in the compensation offered, did not take into account the petitioner’s excellent service or the evaluation of his teaching during the petitioner’s advanced study period. For this reason, the Standard Table at issue was deemed unconstitutional in the petitioner’s case, and therefore a statutory interpretation was requested. The Standard Table for the Compensation of Public School Faculty and Staff served as the second appendix to the Regulation at issue, and thus should be viewed as part of the Regulation at issue. Given that the Regulation at issue violated the Constitutional principle of legal reservation, the Yuan ought to precisely interpret the Regulation at issue (refer to Judicial Yuan Interpretation No. 289). Furthermore, the

年資部分之規定，有牴觸憲法之疑義，聲請解釋。因上開說明為系爭辦法第二條附表所附之說明，即屬系爭辦法之一部分，系爭辦法既違反憲法上法律保留原則，本院自得以系爭辦法為解釋之對象予以解釋（本院釋字第二八九號解釋意旨參照）。惟上開教師之待遇制度，以法律明文或法律明確授權之命令加以規定，需相當期間妥為規劃，相關機關應於本解釋公布之日起三年內，依本解釋意旨，制定上開教師待遇相關法律，以完成上開教師待遇之法制化，屆期未完成制定者，系爭辦法關於上開教師部分之規定，失其效力。

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abovementioned system of teacher's welfare and compensation shall be regulated by means of laws or according to orders issued by legal authorities. To comply with this requirement, a certain period of time is needed for proper planning, and the relevant authorities should promulgate laws regarding teacher's welfare and compensation in accordance with this Interpretation within three years after this Interpretation has been announced. By doing so, it is expected that the matter of teacher's welfare and compensation may be legalized. If the task is not finalized after the said three-year period, the part relating to teachers of public high school and lower levels within the Regulation at issue shall be nullified.

Justice Yeong-Chin Su filed concurring opinion.

Justice Mao-Zong Huang filed concurring opinion.

Justice Pai-Hsiu Yeh filed concurring opinion.

Justice Shin-Min Chen filed concurring opinion.

Justice Chang-Fa Lo filed concur-

本號解釋蘇大法官永欽提出協同意見書；黃大法官茂榮提出之協同意見書；葉大法官百修提出協同意見書；陳大法官新民提出協同意見書；羅大法官昌發提出協同意見書；湯大法官德宗提出部分不同意見書。

ring opinion.

Justice Dennis Te-Chung Tang filed dissenting opinion in part.

### **EDITOR'S NOTE:**

Summary of facts: The Petitioner, X, is a primary school teacher who obtained a Master's degree in 2007, and who, through the school where he was employed, applied to the County Government for a change in the rank of his salary. The County Government recalculated the Petitioner's salary to a starting sum of NT\$245 for holders of an MA degree according to the Standard Table appended to Article 2 of the Regulations for the Compensation of Public School Faculty and Staff and raised his salary scale by ten points taking into account the teacher's ten years of service (1993-2002). However, based on Article 5 Paragraph 1 of the Standard Table for the Compensation of Public School Faculty and Staff dealing with the period of time during which the teacher was studying-on-the-job which states that this period of service is not to be taken into account, the Petitioner's time of on-the-job study, namely

### **編者註：**

事實摘要：聲請人 X 為國小教師，於 96 年間取得碩士學位，經任職學校向縣政府申請改敘薪級。縣政府依公立學校教職員敘薪辦法第 2 條所附敘薪標準表，以碩士學位自新臺幣 245 元起敘，採計其教師年資 11 年（82 至 91 年）提敘十級；復依敘薪標準表說明第 5 點第 1 項關於在職進修改按新學歷起敘時，不採計進修期間服務成績優良年資之規定，就聲請人自 92 至 94 年間帶職進修年資不予採計提敘，而核定其本薪為 430 元。聲請人認敘薪標準表說明第 5 點第 1 項不採計進修期間年資之規定，損害其改敘之權益，有違憲法平等權與服公職權保障，於行政爭訟遭駁回確定後，聲請解釋。

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2003-2005, was not taken into account, and so his salary was fixed at NT\$430. The Petitioner deemed that the regulation excluding the period of on-the-job study contained in Article 5 Paragraph 1 of the Standard Table for the Compensation of Public School Faculty and Staff harmed his right to a change in compensation and infringed the right of equality in the Constitution and the guarantee of rights for civil servants. When his case was finally rejected by the administrative court, the Petitioner applied for a Constitutional interpretation.