

J. Y. Interpretation No.338 (February 25, 1994) *

ISSUE: Is the precedent holding to the effect that a person dissatisfied with the determination as to his or her ranking or remuneration may not initiate an administrative litigation in violation of the Constitution?

RELEVANT LAWS:

Article 16 of the Constitution (憲法第十六條) ; Article 7 of the Civil Servant (公務人員俸給法第七條) ; J. Y. Interpretation No. 323 (司法院釋字第三二三號解釋) ; Administrative Court Precedent 57-Pan-414 (行政法院五十七年判字第四一四號判例) ; Administrative Court Precedent 59-Pan-400 (行政法院五十九年判字第四〇〇號判例) .

KEYWORDS:

rank and pay scale of civil servants (公務人員俸給) , administrative litigation (行政訴訟) .**

HOLDING: If a government agency makes a determination in a review of civil servants that a civil servant is not qualified to serve or should be demoted, this determination has a material effect on his or her constitutional guarantee to serve

解釋文：主管機關對公務人員任用資格審查，認為不合格或降低原擬任之官等者，於其憲法所保障服公職之權利有重大影響，公務員如有不服，得依法提起訴願及行政訴訟，業經本院釋字第三二三號解釋釋示在案。其對審定

* Translated by Lawrence S. Liu.

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in the government. Therefore, he or she may bring an administrative appeal or administrative litigation in accordance with law. This position is reflected in our Interpretation No. 323. Judicial Precedents 57-Pan-414 and 59-Pan-400 of the Administrative Court shall cease to be applied henceforth. Our Interpretation No. 323 is also hereby amended.

REASONING: Whether a civil servant receiving an administrative sanction may bring an administrative litigation depends on the nature of the sanction. This position is clear from our previous Interpretations Nos. 187, 201, 243, 266 and 312. If it is one that is sufficient to change his or her status as a civil servant, or one that constitutes a material disciplinary sanction of a civil servant, then the civil servant subject to such a sanction may seek relief with the competent judicial authorities that are charged with reviewing such disciplinary matters. This position is also made clear in our Interpretation No. 298. In addition, if persons who wish to serve as civil servants with various government agencies receive a review

之級俸如有爭執，依同一意旨，自亦得提起訴願及行政訴訟。行政法院五十七年判字第四一四號及五十九年判字第四〇〇號判例應不再援用。本院上開解釋，應予補充。

解釋理由書：公務員因其身分而受行政處分者，得否提起訴願及行政訴訟，應就其處分內容分別論斷，迭經本院釋字第一八七號、第二〇一號、第二四三號、第二六六號及第三一二號解釋闡釋在案。關於足以改變公務員身分或對於公務員有重大影響之懲戒處分，受處分人如有不服，得向掌理懲戒事項之司法機關聲明不服，亦經本院釋字第二九八號解釋釋示甚明。又主管機關對公務人員任用資格審查，認為不合格或降低原擬任之官等者，於其憲法所保障服公職之權利有重大影響，公務員如有不服，得依法提起訴願及行政訴訟，業經本院著有釋字第三二三號解釋。其對審定之級俸如有爭執，依同一意旨，自亦得提起訴願及行政訴訟。行政法院五十七年判字第四一四號及五十九年判字

by the agencies in charge of personnel that determine such persons should not be qualified or should be demoted, this decision materially adversely affects the constitutional guarantees of serving in the government. If these persons undergo a legal procedure for reconsideration and still challenge the same determination of the reconsideration proceedings, they surely may seek administrative appeal or litigation. This position is reflected in our Interpretation No. 323. By the same logic, if a civil servant challenges a determination of his or her rank and pay scale, surely he or she may also seek administrative appeal or litigation. Judicial Precedents 57-Pan-414 and 59-Pan-400 of the Administrative Court shall cease to be applied henceforth. Our Interpretation No. 323 is also hereby amended.

Justice Chien-Tsai Cheng filed dissenting opinion.

第四〇〇號判例應不再援用。本院釋字第三二三號解釋，應予補充。

本號解釋鄭大法官健才提出不同意見書。