

Critical Evaluation of Legal Retirement Policy of Public University Faculties in Afghanistan

Mohammad Ghouse Farhan

Teaching Assistant, Faculty of Public Policy & Administration, Herat University, Herat – Afghanistan

Abstract: Retirement is the process through which an employee exit an organization upon completion of his/her term of service. It is a natural, inevitable part of the employment cycle which every public servant or academic employees has to go through. The legal regime of retirement and method used to calculate the retirement's benefits vary from a country to country depending on each country's socio-legal conditions. Retirement is a transitional process whereby the retiree transits from one role to another and as such has important legal, economic, personal, and social dimensions. The main purpose of this article is to study the legal regime of retirement that regulates the retirement of academic employees under Afghanistan legal system. This article will enrich our understanding of the legal aspects of retirement of academic employees. The researcher is going to employ a descriptive method of analysis. This article has found that Afghanistan's legal system subjects academic employees to the same legal regime as other public servants. This research recommends that Afghanistan, instead of classic retirement, should institute a multi-stage retirement system for the academic employees.

Keywords: Retirement, Multi - Stages Retirement, Retirement Contribution, Pension, Last Salary

1. Introduction

People work to sustain life, and in today's societies, the right to work is combined with the right to life, because, except in a few cases, unemployment is synonymous with poverty and deprivation. The right to work and to choose a job is guaranteed in the laws of all countries, including developed and developing, likewise, Article 48 of 2004 Constitution of Afghanistan contains it for every citizen of Afghanistan. But of course, human beings, like any other living creature, reach old age and need comfort. This is inserted in the administrative laws of the countries that entitled the right of retirement as the end of employment which is a mandatory fate that somehow arises for government employees at different times and it is as a persuasive employee holiday (Bozorgmehri, 2007: 95).

On the other hand, government agencies also have to use more energetic and younger forces to increase efficiency and effectiveness of their activities. Increasing the duration of servicing and the need of offices to recruit young people, these two factors make a number of government employees separated from official activities which must live comfortably until death, in an old age when they are unable to work. Therefore, this comfort is not guaranteed except in the shadow of retirement right. In line with the hierarchy of needs of Abraham Maslow, the need for security, which includes retirement as well, comes after physiological needs. Abraham Maslow believes that a person's behavior at a particular moment is usually determined by his or her strongest need. Therefore, it is important for managers to gain awareness and information about the needs that are most important to employees (Sultani, 2015:151). The use of Maslow's theory of needs in this paper is sufficient to understand the importance of the retirement system in administrative law and human resource management.

In the legal system of Afghanistan, right of retirement is recognized in the labor law and is described in detail in the Regulation on Pension Rights of Civil Servants and its amendment. According to law and regulations, governmental

faculty members will retire as other civil servants, after a lifetime of service to the scientific community. The turning point is whether over time, the knowledge and expertise of a faculty member or professor will diminish like the physical force of a civil servant? Or a one-time cut-off is reasonable for faculty members just like other government employees? How they should retire? Or what their consequences are for themselves and society.

This study is looking to examine the legal status of the retirement system in Afghanistan, as well as different types of retirement, how they calculate their retirement, and other related issues. Lastly, it will make suggestions in this field to be as broad as possible in the field of scientific guidance, legislative policymakers and human resource managers.

2. Statement of Problem

One of the most important benefits that attract human resources to government departments in Afghanistan is job security during working time and retirement system which is a basic necessity, it provides leisure for them and thus distinguishes the public sector from the private sector.

The main reasons for conducting research on assessment of retirement of governmental faculty members are as follows: first, retirement as a necessary and indispensable fate that emerges at the end of the working life of government employees as well as members of the public academic staff and given the relatively young structure of Afghanistan society, in the next few decades a large part of the population of civil servants or faculty members will reach in retirement age. Secondly, the point is that education in every society depends on the efforts of its teachers and professors. This class, like other staff, retires after a lifetime of service to the academic society, but does knowledge and teaching style of a faculty member diminish over time as a civil servant over time?, or is it reasonable for a faculty member, like other government employees, to be cut off from workflow once? Third, the retirement system is less discussed with all of its effects on the legal, individual,

social and economic lives of government employees and faculty members. As such, when the legal framework of retirement is identified, it makes possibility for the retired employees to have sufficient knowledge of their rights and receive their full rights from the office concerned which expect no more than administration.

This article intends to examine the legal status of retirement system for governmental faculty members based on Labor Code and Regulation on Pension Rights of Civil Servants of Council of Ministers and its amendment.

3. Research Objectives

The objectives of the research paper are:

- To investigate the retirement policy of faculties of public universities in Afghanistan legal system;
- To understand the different types of retirement policies of faculties in public universities;
- To know how to calculate pension of faculty members of public universities; and
- To analyze the legal, economic, individual, and social impact of retirement system for faculty members.

4. Research Methodology

The method used in this study is a descriptive-analytical one using document analysis in the field of administrative offenses and punishments. The library method was used to collect the necessary information by using written sources such as books, laws, regulations, bills, procedures, treatises, and scientific articles. Researchers have also tried to utilize up-to-date legal and administrative literature and discourses by using reputable scientific websites.

5. Conceptual Framework

Retirement in Literal means dismissal from work and service in old age (Ammad, 2009: 236), or means, sluggishness and relaxation (Dehkhoda, 1986: 398), or act of retiring or the portion of a person's life during which a person is retired (Anwari, 2007: 76). In the administrative law literature, retirement as one of the ways in which employees leave the office is to retire from work due to old age and sometimes due to disability, illness, missing or death (Mohammadi Tamaki, 2011: 485). In other words, retirement means breaking the employee's working relationship with his/her related office and starting a new life.

In definition of retirement, basically, two traditional and new perspectives must be separated. In traditional view of retirement, an employee is shifted from full time to full unemployment status. But in the new perspective, retirement has multi - Stages. Therefore, retirement is a situation where the older employee is actively working as part-time while he/she may receive some or all of the retirement benefits. In simpler terms, multi stage retirement includes situations such as using retirees as a consultant to use their experience, letting them to reduce weekdays or hours on weekdays for a year or two years before full retirement or transforming the type of work for retirees during retirement time at the office (Bahrami, 2008: 86).

The word retirement in Afghanistan legal system is as follows: "retirement is to terminate employment of civil servants in the office in accordance with the law and this regulation"¹. With the above definition, Regulation on Pension Rights of Civil Servants emphasizes the traditional definition of retirement.

The retirement system is a combination of the staff's needs and, in some cases, to help them. As such, the retired employees personally use their pensions as long as they are alive and after death, their survivors can enjoy if have circumstances. However, the existential philosophy of retirement is to provide the lives of employees who are no longer able to continue working in the public service. In addition, while retirement facilitates the exit way of elderly employees from the administrative system, it also allows younger and energetic people to recruit.

On the other hand, the hope to have pension in old age is an impetus for the efficiency of employees at the time of employment. Also, it is a tool to prevent from escaping of efficient forces of public sector to the private sector (Amami and others, 2014: 296).

5.1 Retirement status in the applicable laws

A well-functioning social security system which includes retirement as well is an essential element of any modern society. A society whose welfare system is unable or unwilling to gain the full assurance of its people, should not expect them to be optimistic about the future. Hence, measures that increase people's confidence in the welfare and social security system, on the one hand, will actually stabilize and strengthen the country's economy and, on the other hand, provide state power.

Retirement status in country's legal system is important because retirement and its benefits and facilities have been recognized as a "basic right" for all staffs all faculty members. So neglecting it will eliminate this important issue. A proper living wage system and a pension is not a charity but a right that people in society community should enjoy.

In this respect, Labor Law in Chapter 13 within articles 134 - 144 deals with social security and consequently recognizes retirement. Also it has mentioned them as a right for civil servants and faculty members as well as a responsibility for government.

According to Article 134, 4 and 5 paragraphs of Labor Law of the country, enjoyment of pension based on completion of age and duration of work, sickness, disability, and other conditions are different types of social security system. Also Regulation on Pension Rights of Civil Servants (2009) and its amendment (2013), have considered the issue of retirement and its conditions. The scope of Regulation on Pension Rights of Civil Servants also includes public universities' faculty members, because Article 5, paragraph 2 is considered as: (The pensions of faculty members of

¹The Regulation on Pension Rights of Civil Servants, article 3, paragraph 2, approved 1388.

Afghanistan higher education universities shall be regulated and paid in accordance with the provisions of this Act.)

5.2 Types of Retirement

Considering the context of labor law and Regulation on Pension Rights of Civil Servants, retirement essentially can be voluntary and compulsory. The compulsory state in its nature is classified as compulsory retirement due to law and compulsory retirement due to accidents (Mohammadi Tamaki, 2011: 486).

Voluntary Retirement—it is termination of service before reaching the normal retirement age of 65. It depends on the employee's wishes which usually take into particular age and service history. Therefore, in Afghanistan legal system, by completing 25 - year's active service and completing the age of 55, an employee can apply for voluntary retirement (Regulation on Pension Rights of Civil Servants, article 3, paragraph 9). Pre-term or voluntary retirement applicants, however face the limitation that their pensions will be deducted continuously at 3% per year of service before reaching the age of 63 years (Guidelines for Human Resource Officers in the Civil Service Departments to Implement the Regulation on Pension Rights of Civil Servants, 2010: 9).

Compulsory Retirement - retirement mostly is mandatory and employees are forced to leave government service in accordance with the conditions set out in the law (Mohammadi Tamaki, 2011:478). Based on the Regulation on Pension Rights of Civil Servants, compulsory retirement is divided into two types:

Compulsory retirement due to the law: When a government employee completes the age of sixty-five or has served in the government for forty years, his or her retirement is a statutory or normal retirement. The mention of the age of sixty-five for public universities' faculty members, in addition to the Regulation on Pension Rights of Civil Servants, is also indicating in article 50 of the Higher Education Law of the Civil Service of the country.

Compulsory Retirement due to Accidents: When a government employee is died or disappearance or if he or she suffers from an incurable illness or disability that is incapable of continuing work, will includes compulsory retirement due to accidents which in cases, his/her survivors receive his pension.

5.3 Retirement Quota

Retirement system is a mixture of the needs and sometimes the help of government administration to the employee. Therefore, the retirement quota is part of the monthly salary of staff or faculty members (8%) and is part of the budget of the relevant department (8% of staff salaries) which is totally 16%. The retirement quota is saved to the Ministry of Finance in an equal manner based on the monthly salaries of employees (Guidelines for Human Resource Officers in the Civil Service Departments to Implement the Regulation on Pension Rights of Civil Servants, 2010: 17).

5.4 Calculate Pensions

In Afghanistan, basically pensions are calculated based on the number of years of service, the average wage of the last three years of service, and in some cases with specific coefficients. From legal point of view, pension is a fund paid to the persuaders or their survivors in accordance with the relevant regulation (Regulation on Pension Rights of Civil Servants, article 3, paragraph 5). So pension is the amount of money that is saved by the relevant office plus the amount of the employee's salary that is paid against his/her years of service. In order to calculate the pensions of civil servants and faculty members in the new system of administrative reform, in accordance with the Regulation on Pension Rights of Civil Servants adopted in 2009 and its amendment adopted in 2013, should consider the following situations:

5.5 Pension of compulsory retirement due to the law

When civil servants and faculty members have reached the age of sixty-five or serve for a full term of forty years in the governmental departments, their pensions shall be calculated in accordance to paragraphs 1 to 4 of the Amendment and repeal of some Articles of regulation on Arrangement to the retired civil servants rights as follows:

First Case - The pension of a civil servant and a faculty member for a term of less than one year shall be refunded to him.

Second Case - A civil servant or a faculty member with a term of more than one year to five service years shall be paid two months last salary for each year as a pension. The last monthly salary of an employee is the average salary of the last three years of civil servant.

Third Case - Civil servants and faculty members with a term of service of more than five years to ten years are paid one-time pensions in lieu of each year of service, two and a half months of monthly salary.

In each of the above three cases, because a civil service employee or faculty member has been in service for a period of ten years, the pension payment is at once and the retiree is not entitled to a monthly pension. Therefore, his/her employment relationship with the office is cut off (Amendment and repeal of Some Articles of regulation on Arrangement to the retired civil servants rights, article 2, paragraphs of 1, 2 and 3).

Fourth Case - Civil servants or faculty members with more than ten years of service, will earn forty percent of their salary for ten years and for each year more than ten years, will get two percent of their last salary which receive monthly as pension (Amendment and repeal of Some Articles of regulation on Arrangement to the retired civil servants rights, article 10, paragraph 4).

Pension of compulsory retirement due to accidents

Pension for government employee and a faculty member which is dead or disappearance or if he or she suffers from an incurable illness or disability that is incapable of continuing work, will pay as follow:

Death- Afghanistan legal system pays pensions for eligible survivors of deceased employee or faculty member. According to the Amendment and repeal of Some Articles of regulation onArrangement to the retired civil servants rights, two different situations of work-related death and unrelated work can be imagined.

First Case: Work - Related Death

If a civil servant or faculty member dies as a result of performance of duty or in linewiththeir duty, their pension shall be paid to their eligible survivors irrespective of length of service (Amendment and repeal of Some Articles of regulation onArrangement to the retired civil servants rights, article 14, paragraph 4).

Second Case: Work- Unrelated Death

Civil servants or faculty members who die normally and unrelated to their work are paid their retirement pensions similar to the statutory pensions as mentioned above.In this case, paragraph 1, Article 11 of Amendment and repeal of Some Articles of regulation onArrangement to the retired civil servants rightsstates: “(whenever a civil servant dies, his or her pensions shall be calculated and paid to the survivors).

Disappearance- Disappearance of an employee or faculty member may be related to work or unrelated to work. If missing is related to work or due to work, his/hersurvivor shall receive100 % of his/her last salary as pension (Amendment and repeal of Some Articles of regulation onArrangement to the retired civil servants rights, article 17, and paragraph 1). But if the missing is not due to employee’s duty, the country’s legal system is silent about it.Legal reasoning requires that a pension be paid as a retirement due to the law which mentioned already.

Differently abled– Whenever a civil servant or faculty member is disabled which is unable to continue his/her duty shall be recognized as a retiree. The pension of disability employee is enforceable on the basis of the Disability Stabilization Commission certification.There are basically two types of disabilities that are related and unrelated to work and each of them is calculated as follows:

First Case: Work- Related Disability

Whenever civil servants or faculty members are disabled based on the performance of their duties, their pensions shall be executed and paid 100% as salary without considering their length of service (Amendment and repeal of Some Articles of regulation onArrangement to the retired civil servants rights, article 14, and paragraph 1).

Second Case: Work – Unrelated Disability

Civil servants or faculty members, whose disability is not due to performance of duty, are paid 30% or 50% of their last salary and in some cases they will receive such as compulsory retirement pension regarding length of service.

Incurable illness

The Regulation on Pension Rights of CivilServants mentions disability and incurable illness together, but does not mention the degree and pension of incurable illness.However, the legal status of the differently abled employees applies to the incurable illness at the same quality or the Regulation on Pension Rights of CivilServants should be amended and added specific provisions about incurable illness.

The effects and consequences of retirement

Retirement has various legal, economic, personal and social effects on life of employees and faculty members.

The first legal effect of retirement is the termination of the employee's employment relationship with the government office which by date of notification of retirement, he/she has been considered as a retired employee. But if the administration requires the retirement employees and faculty members inaccordance with administrative requirements, it can provide the grounds for their continued work under certain legal conditions. Other legal effects of retirement are pension which has mentioned above and end – service payment (Amami and others, 2014:306).

Retirement is an economically expensive period for employees and faculty members. The reasons are the cultural, social and lifestyle characteristics of retirees, a relatively large number of families and their expenditures, declining of their retirement income, increased hospitalization rates are attributed to retirees and other age-specific conditions.

Retirement also has individual effects that lead to changes in the routine and daily life of a retired employee.Because the employee has to quit the job which was involved all over working life and end his/her service.This change effects on retirees emotionally and psychologically, because as at first, the multiple psychological, emotional and physical needs of individuals are met in working life. Secondly, through work, employees will get social and personal relationships and values such as belonging, respect and dignity.In addition to the individual consequences of retirement, finally it is a concept that has also social nature.So in this context, some people consider retirement as the end of the retirees' expiration date which are losing their dignity and social status and as well as the occupational and organizational status in the administrative hierarchy.While for others, retirement is the start of a new meaningful period of life for the retirees, where work commitments are eliminated and they are able to prioritize their non-working activities and thus increase their leisure time (Bozorgmehri, 2007, pp: 93 – 119).

6. Conclusion

As noted, retirement is a new period in retirees' livesin terms of leisure time, they can give better meaning to their lives.Retirement is important in two respects.On the one hand, the attention of government departments to retirees has reinforced the morale and sense of belonging of employees towards government departments which will

prevent them from escaping to the private sector. On the other hand, it allows the retirees to spend more time and attention to themselves, their families and relatives or to non-work affairs. Therefore, in traditional view, retirement which is defined as the liberation from work responsibilities and issues in working life has lots of advantages.

Afghanistan legal system has recognized retirement as one of the forms of social security in the Labor Law of the Islamic Republic of Afghanistan. To further explain and introduce retirement, a regulation was adopted by the Council of Ministers of Afghanistan in 1388 which has adjusted 1392. This paper has examined the legal status of retirement for government employees and faculty members based on the Labor Law and the Regulation on Pension Rights of Civil Servants and its amendment. Because the legal implementation area of the Regulation on Pension Rights of Civil Servants and its amendment also includes public universities' faculty members, therefore, it is the important answer to the main question of the current paper.

The findings of the paper state that according to the first sub-question, there are two forms of retirement for faculty members such as civil servants. Their retirement is either due to the law or is due to accidents which include death, disappearance or missing, incurable illness and disability and each of them is discussed in this paper. The second sub-question of paper is how to calculate the pensions of faculty members which is assessed based on the length of service and their last salary. So they sometimes are getting complete amount of last salary during their service and in some cases less than that. The third sub-question of the research deals with the effects of retirement. Basically, retirement for faculty members as civil servants has consequences such as increased economic problems, reduced social and administrative status and increased leisure and unemployment.

In addition, this paper has sought to develop a new approach to defining the retirement of faculty members which count their experiences and knowledge in Afghanistan higher education system during their senior years. In this regard, multi - stages retirement is the best option for retiring of public universities' faculty members.

On the one hand, government universities will achieve greater efficiency and productivity, because with the retirement of faculty members and recruitment of young people, will incur heavy costs on the government treasury. On the other hand, faculty members will share their experiences and knowledge with younger faculty members.

7. Suggestions

Retirement as a social phenomenon has many advantages and disadvantages. Its positive aspects are that a group of employees who have been in government service and society for many years are leaving the job era and they are replacing with young people who are full of energy, power, update information, and of course little experience. On the other hand, people who have been in the service for nearly forty years or have reached the age of 65 years, certainly do not have the past energy to do so. In this situation in the light of

the legal framework for retirement, they will have the opportunity to spend the last years of their lives in convenience. So apart from daily life, they can do different works which have always dreamed of doing.

There are also disadvantages to the retirement system such as disrupting from workplace and inactivate retirees at once can lead to problems such as diminishing social status, isolation, feelings of hopelessness, feeling jobless, exacerbating physical pain and so on. To reduce the disadvantages mentioned above, the following suggestions are offered:

- Retirement is transition from a current job to a new job and every single incident that occurs has different consequences for the human being. Therefore, a one-time retirement will also exacerbate worries and create an imbalance between employees and administration. One way to reduce this concern is to provide multi - stages retirement ground for employees. Examples include employing retirees as advisors, allowing them to reduce weekdays or hours in a day for one or two years before full retirement or changing the type of office work. Therefore, it is suggested to change the form of the faculty members' work rather than interrupting their activity and entering into a state of absolute rest. Like instead of just teaching, they do scientific research, scientific seminars and conferences, guide for student monographs, and more.
- In the teaching profession, use the young forces along with the experienced. Guidance for young professors in making lecture notes or teaching methods brings them closer to the mission of scientific institutions. This paves the way for young professors to learn from the experiences of seniors and monitor their presentations and teaching methods. In this way, young teachers understand the value of senior professors, and older professors understand that they are useful in old age.
- Another suggestion is that leadership of higher education institutions should pave the ground the opportunity for their retirees to assemble them on a regular basis and to organize educational programs and scientific seminars. Thus, launching spiritual retirement programs reminds them that their respective agencies are appreciating to those whose youth workforce has been lost.

However, it is essential to keep in mind that society is morally responsible for those who have spent many years of their lives in promoting society's scientific life. Lack of attention to this class and all retired employees causes concern and uncertainty for current employees and faculty members and reduces their productivity.

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