

The Meaning of Enjoyment of New Rural Social Pension Insurance Benefits

Jiajun Li

*Law School, Guilin University of Electronic Technology, Guilin, China
15129776317@163.com*

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Abstract: If a dispute arises between an employer and a person recruited by the employer who is already entitled to old-age insurance, the dispute shall not be handled in accordance with labor relations. The "old-age insurance treatment" means the basic old-age insurance treatment for urban workers, and the new rural social old-age insurance treatment for over-age migrant workers is not equivalent to it. From the point of view of conforming to the legislative purpose of the Labor Law and helping to safeguard the labor rights and interests of over-age rural workers, it should be considered that the enjoyment of new type of rural social old-age pension insurance treatment does not mean the enjoyment of "old-age pension insurance treatment".

1. Formulation of the Problem

Document No. 1 of the Central Committee of the People's Republic of China in 2023 clearly stipulates that the employment rights and interests of over-age migrant workers should be safeguarded. Whether or not a labor relationship exists between over-age migrant workers who are entitled to the new rural social pension insurance and the employer is a question of whether or not their employment rights and interests should be protected. The Interpretation (I) of the Supreme People's Court on the Application of Law to the Trial of Labor Dispute Cases (hereinafter referred to as "Interpretation (I)") stipulates that a labor relationship is deemed to be not formed as a person has enjoyed the pension insurance benefits. Is enjoying the new-type social endowment insurance benefits for rural areas the same as enjoying the endowment insurance benefits? This question determines whether or not the overage migrant workers and employers form a labor relation. Therefore, this paper from the different decisions of two similar cases, combined with the related laws and regulations and the jurisprudence, tries to answer the question.

2. Origins of the Problem - The Different Decisions of Two Similar Cases

2.1. Case I

At about 10:30 on December 3, 2015, Li Jinqun (born on January 3, 1954, a rural resident of Guangzhou City, a janitor of Shenzhen Xinzirun Property Management Co. Ltd.) died in a traffic

accident on his way from work. The court held that the entitlement to new rural social pension insurance was the same as the entitlement to "pension insurance", therefore a labor relationship wasn't formed between Li Jinqun and the employer.^[1]

2.2. Case II

At about 10:30 on July 28, 2015, Liang Jinxia (born on September 14, 1961, a rural resident of Dongguan City, a cook of Dongguan Fushan Textile Bleaching and Dyeing Co., Ltd.) suddenly died in the company's kitchen when washing rice. The court considered that enjoying the new rural social pension insurance benefits does not mean enjoying "pension insurance benefits", so a labor relation was formed between Liang Jinxia and the employer.^[2]

In the two above cases, Li Jinqun and Liang Jinxia were both over-age migrant workers who had been entitled to the new type of rural social old-age pension insurance, but the courts did not make the same determination as to whether or not they were entitled to "old-age pension insurance benefits". The reason for the different court decisions is that there are different views on the issue of whether enjoying the new rural social pension insurance benefits means enjoying "pension insurance benefits". Accordingly, this issue is analyzed below.

3. New Rural Social Pension Insurance Benefits Are Different From "Pension Insurance Benefits"

3.1. Pension Insurance System

Pension insurance is a social insurance system that provides material assistance from the State and society to meet the basic needs of old age when workers reach a certain age and are unable to earn income from their labor as a source of livelihood. Pension insurance in China consists of three levels, of which basic pension insurance is the core and foundation. According to the different objects covered, it is divided into basic old-age insurance for urban workers, social old-age insurance for urban residents and new rural social old-age insurance. A wide range of people are covered by the basic pension insurance, among them urban enterprise workers are the main object. The payment of pension insurance premiums is compulsory for employees. The new rural social pension insurance covers rural residents aged 16 or over (excluding schoolchildren) who are not covered by the basic pension insurance for urban workers. Farmers can voluntarily choose whether to pay new rural social pension insurance. Social pension insurance for urban residents covers unemployed urban residents who are not covered by basic pension insurance for urban workers, and the payment of insurance premiums is voluntary for urban residents.

3.2. Old-age Insurance Benefits

"Pension insurance benefits" refers to the pension insurance benefits paid to insured persons under the pension insurance system in order to protect their basic living needs. With regard to the basic pension insurance benefits for urban workers, they are funded by the employing organization, individual employee contributions and government subsidies.^[3] The basic old-age insurance benefit consists of a centralized pension and an individual account pension.^[4] To be eligible for urban workers' basic old-age insurance benefits, one must meet the two conditions of reaching the legal retirement age and having paid old-age insurance premiums for 15 years. As for the new rural social pension insurance benefits, it consists of the basic pension and the individual account pension.^[5] The funds come from individual payments, collective assistance and government subsidies.^[6] The following conditions need to be met to enjoy rural pension insurance benefits: first, you must be 60

years of age or older; second, you must not have enjoyed basic pension insurance benefits for urban workers; and third, you must have a rural household registration. The social pension insurance benefits for urban residents are funded by personal payment and government subsidies, and can be received upon reaching the age of 60. As can be seen, there is a clear gap between the basic pension insurance benefits for urban workers and the new rural social pension insurance benefits in terms of the composition of pension benefits and the conditions for receiving them.

As mentioned above, according to Interpretation (I), if an over-age worker is entitled to "old-age insurance benefits", he or she is in a labor relationship with the employer, i.e., the existence of a labor relationship is excluded. According to the Labor Contract Law of the People's Republic of China (hereinafter referred to as the "Labor Contract Law"), if a worker has enjoyed the "basic old-age insurance benefits", the labor contract between the worker and the employer will be terminated, and the labor relationship will no longer exist between the two parties. ^[7]Using the method of systematic interpretation, both the Labor Contract Law and the Interpretation (I) stipulate that the result is that there is no labor relationship, so it is in line with the inherent consistency of the legal system to regard the "old-age insurance benefits" as the "basic old-age insurance benefits". According to the provisions of the Social Insurance Law, employees participate in basic old-age insurance, which is differentiated from the new rural social old-age insurance and the social old-age insurance for urban residents, and therefore the basic old-age insurance is in fact meant to be the basic old-age insurance for urban workers. Thus, the "pension insurance treatment" in Interpretation (I) refers to the basic old-age insurance for urban workers.

3.3. Enjoyment of New Rural Social Pension Insurance Benefits isn't the Same as Enjoyment of "Pension Insurance Benefits"

(1) Fulfillment of the Purposes of Labor Law Legislation

Workers are in a weaker position than their employers, so in order to improve this situation, the Labor Law provides for a certain number of legal provisions that favor the protection of workers and, to a certain extent, limit the rights of the employers. This is the "principle of tilt protection" in labor law. ^[8]In order to continue to maintain the basic needs of life, over-age rural migrant workers, limited to education, technology and other factors can only choose to work most of the labor intensity, low income, high risk, less protection, resulting in the fact that compared with the ordinary workers of the appropriate age, over-age rural migrant workers' disadvantage is more obvious, thus, there is a greater need for them to be given tilt protection. For this reason, it should be considered that over-age rural migrant workers and employers form a labor relationship, that is, "pension insurance treatment" and the new rural social pension insurance treatment is different. On the contrary, if the new rural social old-age insurance treatment is regarded as equivalent to the "old-age insurance treatment", over-age migrant workers will not be able to enjoy the protection of the labor law because of the formation of no labor relationship with the employer.

(2) Help Protect the Labor Rights And Interests of Over-age Migrant Workers

The basic pension insurance benefits for urban workers are relatively high, and have basically met the living needs of over-age people. The new rural social pension insurance benefits are very low in comparison, making it difficult to protect the basic livelihood of over-age migrant workers. Taking Guangdong Province as an example, the Guangdong Provincial Department of Human Resources and Social Security stipulates that participants of basic pension insurance for urban workers should pay pension insurance premiums on the basis of their actual salary income, which should not be less than 60% of the average monthly salary of the province's on-the-job workers in the previous year.^[9] In 2022, the average monthly salary of the province's full-caliber urban employees in Guangdong Province was RMB 8,807. ^[10]

On the contrary, the new rural social pension insurance treatment, its basic pension standard is set at the central level is 55 yuan per person per month, and the minimum standard at the local level in Guangdong Province is 190 yuan per person per month. For the individual account pension, the minimum individual contribution standard is 180 yuan per year and the maximum is 4,800 yuan per year. ^[1]Comparing the basic pension insurance benefits for urban workers and the new rural social pension insurance benefits in Guangdong Province, the former amount is significantly higher than the latter. This shows that the level of protection of the new rural social pension insurance benefits are significantly lower than the level of protection of the urban workers' basic pension insurance benefits. Compared with the better protection that can be realized by the latter, the new rural social pension insurance benefits cannot reach the level of protecting the basic life of over-age migrant workers.

Therefore, as the two protection level is hugely different, and the treatment level gap can not be bridged in a short period of time, it should be clear that the two can not be equated, and enjoying the new rural social old-age pension insurance treatment does not mean to enjoy the "old-age insurance treatment". This is conducive to the protection of over-age rural migrant workers labor rights and interests, and further to realize the substantive fairness. Otherwise, if it is determined that enjoying the new rural social pension insurance benefits means enjoying the "old-age insurance benefits", it is equivalent to considering that the new rural social pension insurance benefits and the basic old-age insurance benefits for urban workers play the same role in safeguarding the old-age lives of employees and over-age migrant workers, respectively. This is clearly not in line with the nature and level of benefits of the new rural social pension insurance, and is extremely unfair to over-age migrant workers.

4. Conclusion

The courts have recognized the employment relationship between persons who have enjoyed "old-age insurance benefits" and their employers as a labour relationship. In judicial practice, the courts have made different determinations as to what kind of employment relationship exists between over-age migrant workers and the employing organization, because of the different viewpoints of the courts on the question of whether or not over-age migrant workers' enjoyment of the new type of rural social old-age pension insurance entitlement means that they are entitled to "old-age pension insurance entitlement". The term "old-age insurance treatment" refers to the basic old-age insurance treatment for urban workers, and there are obvious differences between the new rural social old-age insurance and the basic old-age insurance for urban workers in terms of who they cover, whether they are mandatory or not, the source of funds, and the conditions for receiving treatment. From the point of view of protecting disadvantaged workers and safeguarding the labour rights and interests of over-age migrant workers, it should be considered that the enjoyment of the new rural social pension insurance does not mean that they are entitled to "old-age insurance treatment". The relationship between over-age migrant workers who have enjoyed the new rural social pension insurance and their employers should be recognized as a labour relationship.

References

[1] *The First Court of Guangzhou Railway Transportation of Guangdong Province (2017) Yue 7101 Xingchu 2254.*

[2] *The First People's Court of Dongguan City, Guangdong Province (2015) Dongyi Fa Xing Chu Zi No. 448.*

[3] *Article 11 of the Social Insurance Law stipulates: "Basic pension insurance is a combination of social coordination and individual accounts. The basic pension insurance fund consists of contributions from employers and individuals and government subsidies."*

[4] *Article 15 of the Social Insurance Law states: "The basic pension consists of a coordinated pension and an*

individual account pension. The basic pension is determined on the basis of an individual's accumulated years of contributions, his or her contribution wage, the average wage of local employees, the amount of the individual account, and the average life expectancy of the urban population."

[5] Article 21 of the Law on Social Insurance states: "The new rural social pension insurance benefits consist of a basic pension and a personal account pension."

[6] Article 20 of the Social Insurance Law states: "The State shall establish and improve the new rural social pension insurance system. The new rural social pension insurance system combines individual contributions, collective subsidies and government subsidies."

[7] Article 44 stipulates: "A labor contract shall be terminated under any of the following circumstances: (ii) if the worker begins to enjoy basic pension insurance benefits in accordance with the law;"

[8] Zhang Lin, Study on the Principle of "Inclined Protection" in Labor Law, (2021) Doctoral Dissertation, of Southwest University of Political Science and Law, p. 13.

[9] Official website of the Guangdong Provincial Department of Human Resources and Social Security <http://hrss.gd.gov.cn/zmhd/cjwtk/content/post_1298070.html> (accessed November 15, 2023)

[10] Notice on Issues Relating to the Announcement of the Average Monthly Wages of Employed Persons in Full-Caliber Urban Units of the Province in 2022 and the Upper and Lower Limits of the Basic Pension Insurance Contribution Base for Employees in 2023.

[11] Official website of the Guangdong Provincial Department of Human Resources and Social Security <https://hrss.gd.gov.cn/zmhd/cjwtk/shbz/content/post_4140000.html> (accessed November 16, 2023)