

Principles governing the proceedings in the trial work

HooshangDashtiMarrani^{1*}, SaeidMahboubipoor², Fatemeh Anahid²

¹*Department of Law, Islamic Azad University Bandar e Anzali International Branch, Gilan, Iran.*

²*Department of Law, Ardabil Branch, Islamic Azad University, Ardabil, Iran*

Abstract:-The Centers of employer and employee's problem – Solving divided into (primary) recognition committees and problem – solving committee (revising). The centers don't have so complicated formalities, so that members of committees are experts in employment affairs, and don't impose any cost on parts. The most prominent characteristic is the principle of rapid consideration which is not followed by negative consequences of adjudication stretching; thus problems and fights are solved as soon as possible. These centers are formed and operate based on tri patriotism, that is, their members are selected by three domain of employer, employee and government, each of which have an equal vote. The ways of consideration through these centers are in accordance with implement regulation, which is provided by senior council according to Article 164 of employment law, and is approved by administer of Social welfare, employment and cooperation organization. Finally, obtained results show that Article 164 of implementation regulation, approved in 2012 (New), has effect on employer and employee's problem solving, and has been successful in improvement and reforming relationship and preservation of parties rights. It has some innovations than former regulation and in most of cases, it is according to justice adjudication.

Key words: *Employer, Employee, Adjudication Regulation, centers of problem, Solving.*

I. INTRODUCTION

with regard to the article 157 of the labor code and article 2 of the procedure adopted in 2011 under article 164 of the labor law which states : «considering and deciding on individual or collective disputes and conflicts between employee or trainee and an employer as a result of the implementation of labor law and the following provisions of the law or custom , it is done according to the by law in setting labor dispute authorities». And article 43 of the by – law adopted in 2001 act has expressly announced its unexpected provisions included in civil procedure code. so , it can be said that : labor procedure is used in applying all the principles and rules on the handling of the case design (starting a dispute) until the later stages (defense) and ending (the issuance and enforcement) to resolve disputes between the labor parties . (Employee, trainee, employer) which is due to the implementation of labor laws.

II. THE PRINCIPLE GOVERNING THE PROCEEDINGS IN LABOR PROCEDURE

Principle of just proceedings include : principle of impartiality of judges , right to counsel , right to defend culprit , rule of law , principle of public trial , right to access to proceeding , equality of individuals before judge , right of silence , right of making appeal and some other principles . In labor procedure, in addition to general principles of trial which are in all trials, the special principles of trial which are known as labor procedure principles, are observed, so this part deals with special principles which are known as labor procedure principles, are observed, so this part deals with special principles which are in labor procedure in two separate parts.

III. GENERAL PRINCIPALS IN LABOR PROCEDURE

There are general principles and rules of proceedings in labor procedure as well as other proceedings , one of the most important principles which should be observed in labor procedure is the principle of correspondence of dispute , based on this principle , parties of the dispute should have the right to any kind of defense in proceeding and if one of the parties to the dispute , present new evidence and documents , then the other party should be given an opportunity to defend himself / herself . Signs of this basic principle can be observed in labor procedure such as other proceedings, in addition to the principle of correspondence which has been pointed in Article 15 of proceedings and Article 60 of new labor procedure.

IV. CERTAIN PRINCIPLE OF LABOR PROCEDURE

In the introduction part of labor procedure approved in 2012, the certain principles of proceedings have clearly been mentioned, the introduction is as following: « according to the Article 164 of labor law of Islamic Republic of Iran, approved by state exigency council in 1990. 8. 29 and with regard to the observance of just proceeding rule and certain principles of labor procedure including: 1) principle of speed. 2) principle of non – officialness of trial. 3) Principle of specialization and technicality of trial 4) principle of tripartism 5) principle of free labor procedure was approved as following . considering the above passage we can find that in labor procedure there is a special care about observation of just proceeding rule and considering and observing five basic principles pointed in labor procedure , it can be said that in ratification of new procedure rules , the observance of mentioned principles has been considered by law – maker .»

V. EVIDENCE IN SUBSTANTIATION OF CLAIMS

In Article 82 of new labor procedure, the evidence in substantiation of claims in labor disputesettlementauthoritiesincludes:confession,documentationandcircumstances,respectively.confession:According to Article 202 civil procedure code, when a person confesses which is the evidence of rightfulness of his / her party, then there is required no other evidence to ascertain it. The literal meaning of confession is consolidation and civil code in Article 1259, defines the confession as:"confession is acknowledgement a right for others but harming oneself ». The definition of civil code is resulted from Islamic law. So, considering the mentioned definition, the elements of confession are: narrating a right against oneself and favorable to another person. Also, for the validity of the confession, the person who confesses must be competent and the person who makes confession should be present and the confession matter should be legal. In Article 82 of labor procedure , confession has been known as the first and the most important evidence and , due to more emphasis , Article 83 of recent procedure has said that : « If one of the parties confess on the other 's claim ,the mentioned claim with acknowledged confession and to acknowledge the claim no other reason is required .» so , regarding the matters we can see that , in labor procedure one of the most important reasons is the confession and thereby no other principle and reason is not required . However, Article 84 of labor procedure points out that: « everybody's confession is effective on the person himself / herself and his / her deputy and is not operative on another's right unless the law has required an agreement. » In stating the former probate procedure it was silent and confession is a principle of civil procedure, thus Article 82 and 83 of labor procedure is in accordance with confession of just procedure.

VI. DOCUMENTS

One of the most important documents that dispute settlement authorities deal with is labor contracts which some of their procedural conditions are mentioned in Article 10 of labor law , the text of mentioned article is : « labor contract in addition to the exact characteristics of the parties , should contain the following matters : »

- A) The type of job or profession or a task for which the worker should be employed
- B) Basic wage or salary
- C) Working hours, holidays an leave
- D) The workplace
- E) The date of conclusion of the contract
- F) Term of contract if the work is determined for a certain time
- G) Other cases that are required by occupation custom

Note: In cases where the employment contract is in written form, it is formulated in four copies of which one copy is for employed, other copy is delivered to Islamic labor council and in the workshops lacking council it is given to the worker's representative. »

There is no definition about document in former procedure and only the Articles 14 and 16 have been used for issues to present it to trial authority in term of « documents or evidence » however in new labor procedure and in paragraph 6 of the Article, a new labor procedure has been introduced: « A document is a writing that should be preferable to a claim or a defense ». since the document should referable, the issuing conditions should be observed, regarding the issuance conditions, documents are classified into two groups: ordinary instruments and official documents: « an official document is a writing that is issued by official officer in terms of his scope of jurisdiction and rules » (paragraph 8 of Article 1 of laborprocedure) and « an ordinary document is a writing that is issued without observing formalities of official document. » (Paragraph 7 Article 1 of labor procedure) and the criticism to paragraphs 7 and 8 of first Article is that: since the official document is more valid and higher than ordinary one, it would be better if the definition of official document was mentioned in the by – law before than ordinary document. In other words, the definition of ordinary document is subject to the recognition of official document which this has not been observed.

VII. CIRCUMSTANTIAL EVIDENCE

Circumstantial evidence once are applied that the aforesaid substantiation proofs i. e. confession and document are not available or the mentioned evidence are insufficient and not strong , thus the forum can differentiate each party as rightfulness or non – rightfulness by using signs or similarities that are called circumstantial evidence. In former trial procedure about circumstantial evidence in Article 16, using the term "circumstantialevidence" for the carefulness of forum beside the evidenceand, if necessary, referring it to be investigated for finding the fact. But, the important principle of procedure has been considered in new labor procedure and has been writing in Article 88. Circumstantial evidence is the outwardly against the inner nature which is called "reality". In fact, the circumstantial evidence is an outward that the judge leads the authorities to the inner nature, according to Article 88 of labor procedure, the circumstantial evidence is divided in to two groups 1) legal circumstantial evidence. 2) Judicial circumstantial evidence. The legal circumstantial evidence is circumstances that are known as evidence for a state in law; however, judicial circumstantial evidence is circumstances that judge realizes conscience satisfaction by it and according to the judge or forum is recognized as evidence for a state. As it was mentioned, Article 16 of former procedure in this regard is as following: « Cases in which statements, documents and expressed evidence from parties differ from each other, the forum should try to find fact in term of circumstantial evidence, similarities and refer the case for investigation, if necessary. » One of the main characteristics of judicial circumstantial evidence is the freedom of forum in using modern science and techniques and up – to – date technologies as similarities and circumstantial evidence. As an example tape or electronically machines controlling the presence and absence of personnel as signs (similarities) and circumstantial evidence to guide the authorities' mind in order to find the fact. According to Article 88 of labor procedure; « circumstantial evidence is circumstances that is recognized as evidence due to the law or forum's opinion such as local investigation and expert advice. »

A) Local Investigation Local investigation is obtaining information from local people about the dispute subject and its difference with oral evidence is that testing is the result of witness's sense who has directly seen or heard, while the local investigation is dependent on indirect information of people who have obtained some information due to the vicinity of their workplace or living place with the place of dispute subject (Madani , 2000 ; p . 252) . However, in the pointed procedure, referring the case to be investigated is considered as forum's authority and no point is made about the rightfulness of dispute parties to refer the case for investigation and this cannot affect the dispute parties' request for local investigation the case. The inquisitor based on Article 24 of trial ordinance and how to hold the sessions for discretionary and former dispute settlement boards and also according to Article 95 of labor procedure (new) the parties to the dispute should ask them to attend in the investigation place in a determined day and time and on the basis of mentioned by – law , the issuance should have been done within a week since the date of issue , while the period has been increased by 10 days in Article 91 of current labor procedure points out that : « the forum can assign the investigation on labor inspector or on some members of his own forum regarding the case nature and other circumstances. » thus , in new by – law , the authorities have been assigned on the forum which considering the case nature and other circumstances , conducting the local investigations have been assigned on the inspector or the members of the forum . so , it can be seen that the invention done by Article 93 and was in abeyance in former trial by – law , the members of forum do the investigations , so on – site inspection order is done by inquisitor selected by the forum or labor inspector or members of the authority . Unfortunately, despite the fact that current labor procedure and former mode of proceedings approved by minister of cooperation, labor and social welfare, the required care to exact explanation of dispute settlement authority place and how to link these two with the agencies of cooperation, labor, and social welfare and officers and clerks who work in the area of labor communications have not been done. A good example can be Article 25 of trial by – law and mode of holiday sessions for discretionary and former dispute settlement boards and Article 96 of current labor procedure which has pronounced to transfer the case to the organization of cooperation, labor and social studies by dispute settlement authority. While dispute settlement authorities lack required facilities and office systems for such cases and in practice, the dispute settlement authorities point out to the necessity of investigations in target place in addition to issue order and the local organization of cooperation, labor and social welfare is the place from which the case is transferred to the bureau of investigation.

B) Expert advice: One of the methods used for substantiating the dispute is the expert advice and it is a scientific and practical information and experimental antecedents to some cases , the expert is a person who due to his expertise , knowledge , technique and information can assist to the forum to issue the real judgment , the expert issue may face problems since presenting the petition to issue the judgment (Elahiyan , 2004 , P . 259) . so , the reason for using the expert advice is due to the basic judicial decision and judicial write and scientific , technical and calculation base , in one side , if there is a specialized problem and judge cannot personally obtain a scientific opinion about whatever is required , therefore , remitting the case to an expert advice is sent to the judge . This has been considered by legislature as significance in Article 98 of new labor

procedure and has promoted the forum's opinion in remitting the case to the expert opinion for limiting the parties for their request of dispute in « forum's opinion ». There is a criticism on Article 98 of by – law suggesting that the board refers the case to expert's advice according to their determination but has not said that who will expert judgment if the defendant is not convicted . Also, it is required to say a note as executive orders will be determined and declared from the ministry of cooperation, labor and social welfare. There is another interesting attempt by which the forum has provided with authority to assign the expert payment on losing party, which the Article against the principle of incompetency of labor authorities is a loss in dispute trial which should be done in term of literal meaning. C) Oath and testimony: Oath means informing a right which the person does it for himself and against the other person and calls God as his witness (katuziyan, 2003, P.802). Dispute parties can resort to oath when other evidence such as confession, testimony, document and circumstantial evidence are not the cause of personal knowledge of the judge.

According to Article 82 of labor procedure, the evidence for substantiating the dispute in labor authorities include confession, document and circumstantial evidence, so regarding the mentioned article, the testimony of witnesses and religious oath in labor procedure are not considered as a reason, however, in mentioned article, the testimony of witness has been reduced to circumstantial evidence but has not pointed to religious oath. C) Oath and testimony: Oath is informing a right which the person does it for himself and against the other person and calls God as his witness (Katuziyan, 2003, P.802). oath , in Iranian law is an evidence that recognition , respect and observing it is more based on religious and spiritual beliefs of people and has been known as one of the evidence approving dispute and in addition to Articles 1946 to 1956 , civil code deals with mentioning relevance conditions and discussions in Article 270 to 289 of civil procedure code . The parties to the dispute can resort to oath when other evidence such as confession, testimony, document and circumstantial evidence are not cause of personal knowledge of the judge. According to Article 82 of labor procedure, the evidence approving dispute in labor authorities and forum include confession, documents and circumstantial evidence, so regarding the mentioned article, testimony of witnesses and religious oath in labor authorities are not accounted as reason, however in mentioned article, the testimony of witness has been reduced as circumstantial evidence but no point has made on religious oath. According to what so ever has been expressed in labor procedure the testimony has just been considered as circumstantial evidence.

VIII. DEFENDANT DEFENSES

The literal meaning of defense is the Arabic infinitive of " Daf " meaning " help " and " support somebody " or " defecate bad or trouble " and " Daf " means " remit " , refuse a discourse with proof , disagreement and avoidance (Dehkhoda , 1986 , P .10940) and in law it is an answer which parties to a dispute give to each other (Jafarilangroodi , 1993 , P . 303).

However , it is worth – mentioning that is (new) labor procedure , the above mentioned cases , that is , procedural defense are discussed in chapter 7 under the title of " challenge in trial " and meritorious defense has been mentioned in chapter 8 under the title of " evidence in substation of claims " .

Thus, here, we will deal with two sections: First, meritorious defense and second procedural defense by defendant and other objections.

IX. MERITORIOUS DEFENSE

If the defendant cannot success in dispute through procedural objection , he / she inevitably should start a meritorious defense , in other words , when the defendant has presented evidence in the proceeding initiated against himself and starts a " meritorious defense " , which « defense also means more peculiar » , but all of the above – mentioned cases whether the defendant starts a defense or resorts to objections and initiates a counter claim defense is called " more general " (vahedi , 1998 , P . 123). Thus defense meaning more peculiar is one of the necessities of meritorious defense for defendant and no difference , both resort to evidence for example plaintiff for substantiate his claim or defendant to refuse it .

In Article 87 of new labor procedure, the law has been mentioned in former state by law – maker suggesting significance and place of meritorious defense in presenting evidence and documents for dispute parties in labor trial authority. According to this, Article 1257 of civil code says that: « A person who claims a right, he / she should substantiate it and if the defendant claims something to defense which requires evidence, substantiating it is up to him / her. » And according to this principle, substantiating the claim is up to the plaintiff » that is , the concept of the principle is that each of the parties are required to substantiate facts and elements of the subject in court which are documentary for their claims (paragraph 1 , Article 21 of extra national rules of procedure) thus Article 87 is consistent with the just trial principles .

X. OBJECTIONS

Objection is a challenge in civil procedure which one of the dispute parties can have a representative of other party for dispute , judge , other party , jurisdiction of the court (Ja'fari , Langroodi , 1993 , p .758) .

Objection means the defendant, regardless of the nature of the dispute, makes an objection for the principle of dispute and its method to control the dispute settlement temporarily or permanently. objection have been historically considered since the first days of legislations related to civil procedure and have been raised in Articles 84 to 90 in civil procedure of public and revolutionary courts by having changes and modification in their package and the mode of presenting them and basically discussions on objection are of general provision of rules of procedure which are used in all hearing authorities and must be considered. Due to article 30 of former procedure of proceedings; « if between the dispute parties, there is a simultaneous criminal action co related to a pending suit in dispute settlement authorities in other judicial authorities under consideration which results in helpful determination board in verdict of dispute settlement authorities, then rendering of judgment will be depend on prompt disposition of criminal action in mentioned authorities ». And in Article 70 of new labor procedure is to complete Article 40 of former procedure of proceeding and has laid down that : « In the following cases , the members of forum has no right to attend in the meeting and participate in hearing and the parties can also refuse them :

In last part of this article, new labor procedure has presented the phrase « and parties can also refuse them » from which the Article 91 of civil procedure has been derivate and has completed the Article 40.

1 – When the member of the authority or his wife or his children has a personal profit in a pending suit or are, representatives of dispute parties.

2 – When the member of authority or his wife has a blood or marriage relationship with one of the parties to a dispute from third degree of any class.

3 – When there is a criminal or civil action between the member of authority and his child with one of the parties to a dispute or was raised earlier.

4 – When the member of authority has earlier commented about the same case as a magistrate or arbiter or expert or inspector or inquisitor or a witness.

5 –When the member of authority is overseer or master of one of the parties or overseer or overseer or master of wife or children of one of the parties or overseer or master of one of the parties or breadwinner and guardian of authority member or his wife and children.

As it can be seen , legislature of new labor procedure is too complete the current paragraphs of Article 40 of former procedure and deals with it in Article 79 as future explanations , first , emphasis on refusing members who lack inclusion qualifications of the article by dispute parties is one of the new acts of new procedure , second , in first paragraph of Article 79 « child » of forum has been mentioned as the same paragraph « and » Article 91 of civil procedure code which there was a vacuum in former procedure and in paragraph two has promoted the blood and marriage relationships to third degree of any class according to paragraph « A » of Article 91 of civil procedure code and in third paragraph , the background of presented dispute has been mentioned , which , in turn , is one of the mentioned cases in paragraph « h » of Article 91 of civil procedure code ; and in paragraph 4 of Article 79 of new labor procedure , adding people such as ; arbitrator or expert or inquisitor or a witness like paragraph « d » of Article 91 of civil procedure code are of new acts of labor procedure .

IT SHOULDN'T BE IGNORED THAT DUE TO ARTICLE 73 OF LABOR PROCEDURE

« Defendant can object in following cases before entering in to the nature of the dispute or at the same time of defense:

1. The forum has no local or inherent jurisdiction

2. The dispute has been previously initiated between the same individuals in the same authority or other authority and is under consideration or if it is not the same dispute, it should be a dispute which is completely related to the plaintiff's claim.

3. The plaintiff has no legal capacity for initiating a case.

4 – The dispute is not related to defendant.

5 – If the plaintiff's representative initiates the case (including lawyer, legal guardian, overseer) the representative's position is not covered.

6. The dispute has already been under consideration between the same individuals or those whose disputes are the dispute parties and the final decision have been pronounced.

7. The dispute has no legal effect on substantiation assumption

8. The discrepancy is not legal.

9. The dispute is not definite but there is a probability.

10. The plaintiff is not benefic Katuziyan, 2003, P.802 iary in the dispute

However, the above – mentioned cases in Article 73 have no analogical aspect and are not considered as limitative, thus, the defendant can object, if necessary, in hearing session such as: lack of hearing causes.

Thus, according to the principle of « independence and impartiality of court and its members », the court and its members should be impartial in hearing the matter and judgment. According to paragraph 3 of first principle of extra national civil procedure code rules; « court should impartial. Judge or any other person who has the

decision – making authority on the dispute Judge as a person, who has been assigned as a special person in legislation, should be impartial and never advocate a person or other special people who are beneficiary in trial. In other words, the judge should not have any tendency toward the dispute parties (Ghamami, Mohseni, 2007, P.46). Anyway by close reviewing of Articles 30 and 40 of earlier procedure or Articles 73 and 79 of new labor procedure we can find that the mentioned articles are in agreement with just procedure rules and some other adjourns the proceedings. A) Objections making stay of proceedings:

XI. OBJECTION TO THE COURT JURISDICTION

Dispute settlement authorities are of special administrative authorities with determined and inherent competence and are of relative jurisdiction related to their own geographical location, thus, when the pending suit, in defendant's opinion is out of inherent and relative jurisdiction term of the authorities, he has right, in this regard, to object and the forum due to lawful superiors of rules related to qualification is obliged to make a required decision, if he considers himself as a competent person, then he will continue hearing, otherwise he will try to enter a court jurisdiction order.

XII. OBJECTION TO NOTIFICATION (SERVICE)

If the papers concerning lawsuit have not been delivered or the service is not valid, defendant can object the matter and if the object is acceptable the session will be repeated. If in any juncture of hearing, before rendering of judgment, the mentioned objection is raised and is justified and the defendant is totally unaware of hearing course, it will lead to hearing annul up to that period and all attempts will be started over.

XIII. OBJECTION TO INCAPACITY

As it was mentioned before, the plaintiff should have capacity to exercise rights and discharge obligation to file an action, because due to Article 958 of civil code nobody can exercise his / her rights unless s / he should have legal capacity in this regard, thus in paragraph 3 of Article 84 of civil procedure code, the legal incapacity has also been recognized as objection in some way including legal aspects such as minority, immaturity, mania or barred from disposal of properties due to bankruptcy order.

XIV. OBJECTION TO LACK OF POSITION ASCERTAINMENT

When a person, not as a principal but as a representation from another person has commenced an action under titles as: attorney ship, mastership, guardianship, representation of legal person and so on, is needed to present documents related to his position ascertainment and if his position is not ascertained, then defendant can object, Article 85 of civil procedure code, in this regard, says: « plaintiff is rightful to object to a person who has answered as an attorney ship, guardianship, mastership or executorship, if his position is not ascertained. » so, if the plaintiff commences an action, the objection to lack of position ascertainment is not suitable.

(Zera ' at, 2004, P .245), and in new labor procedure, according to article 73, paragraph 5, if the representation of plaintiff starts an action, but his position such as attorney ship, mastership, guardianship or so is not ascertained, then the defendant can object and according to Article 74 of the same procedure: « plaintiff has right to object against a person who has answered the dispute as attorney ship, mastership, guardianship or executorship when his position is not ascertained. » so, regarding to whatever has been mentioned, if a person's position, who has answered the dispute as attorney ship, mastership, guardianship or executorship when his position is not ascertained. » so, regarding to whatever has been mentioned, if a person's position, who has answered the dispute as attorney ship, mastership, guardianship or executorship or so, is not ascertained, then the other party can object to this matter, thus, the forum also can enter an order to dismiss the action in term of objection to lack of position ascertainment. The action can be presented again by a principle with competency or a representative having a position. Thus, it can be seen that the case is of articles and is of silent cause of former procedure and is based on hearing principles and is consistent with just procedure of proceeding and the matter is one of the inventions of new labor procedure related to former procedure.

XV. OBJECTION TO NON – OFFICIALNESS OF MEETING AND THE FORUM

Since labor authorities are influenced by trilateralism system and consist of representatives of management and government agents and according to Article 10 of former procedure of proceedings, the subject of Article 164 of laborlaw, and their officialness in discretionary board is dependent on the presence of all three members and in dispute settlement board is dependent on the presence of at least seven members and. » Thus, in new labor procedure, according to Article 55 of discretionary board meeting is formed with the

presence of three members , conference leader is the representative of ministry of cooperation , labor and social welfare and decisions of board will be adopted by majority of votes (quorum) . »

XVI. ACCORDING TO ARTICLE 56 OF RECENT PROCEDURE

The meeting of dispute settlement board is held officially by presence of at least seven members, and its decision will be adopted by consenting vote of at least five attendants in meeting. Conference leader will be selected by director general of cooperative, labor and social welfare or his representative. » Thus, if any of the authorities start hearing without acquiring required quorum, the matter can be objected by each of the dispute parties .

XVII. OBJECTION TO CASES CHALLENGING A JUDGE

According to Article 40 of former procedure , and due to Article 79 of present labor procedure which have mentioned the causes of challenging members of a forum based on Article 91 of civil procedure with trivial changes , so , when the members of dispute settlement authorities are included in one of the above – mentioned cases , they have no right to hearing and are obliged to avoid hearing and declare tasks to local Ministry of cooperation , labor and social welfare to replace other members .

B – Objection adjourning proceedings:

These are objections that the defendant applying it can be, if is accepted by court or the forum, a permanent ban for hearing which is called adjourning of proceedings. Thus in Article 73 of labor procedure some cases have been mentioned which the defendant can adjourn the procedure completely by invoking to them.

XVIII. OBJECTION TO A PENDING MATTER

When the initiated action or an action that is completely related to it, has already been initiated in the same authority or other one and is under consideration. And if it is not the same dispute, it should be a dispute which is completely related to plaintiff's claim (paragraph 2, Article 84 of civil procedure code). For example; If an employee, in addition to commencing an action against the employer and request for payment of length of service, s / he can initiate a new petition due to resignation to settlement of accounts and advantages of termination benefits.

XIX. OBJECTION TO A PENDING MATTER

This kind of objection is initiated when the defendant, is not the real party of the dispute and no claim can be against the defendant, is not the real party of the dispute and no claim can be against the defendant, if it is substantiated, like commencing an action by employer against the employee's father or commencing an action by employee against the director general of the company which in these cases the action is not against the defendant. In first example, the real party to a dispute is the employee and in second example, the dispute parties the company as a juristic personality not director general, it is the same, if the action is against the attorney. According to paragraph 4 of Article 84 of civil procedure code , the defendant can , in mentioned conditions , object to disregarding the action and according to paragraph 4 of Article 73 of labor procedure , if the dispute is irrelevant to the defendant , then the action will be adjourned by defendant's objection and accepting it by forum .

XX. OBJECTION TO AUTHORITY OF JUDGED MATTER

Once an action was investigation for the first time and led to the rendering of final judgment, it is impossible to make a request for trial of the same case. (Paragraph 6 of Article 84 of civil procedure code). If the same case is initiated by one of the parties, the other party can start objecting to the judged matter and if the court accepts the objection, abatement of action will be rendered (Mohajeri, 2002 , P . 367) .

IN LABORPROCEDURE, PARAGRAPH 6 OF ARTICLE 73 HAS POINTED TO THE IMPORTANT MATTER AND HAS EXPRESSED THAT

The action has already been heard between the same individuals or those whose deputies are parties to a dispute and the definite judgment has been rendered. »

Thus, in these cases, the forum renders the order of abatement of action and the procedure will be adjourned. However, with regard to the objection on judged matter we should notice that in two disputes the following should exist: 1) subject unity, 2) cause unity, 3) dispute party's unity. That is both relief thoughts are the same and both are created from the same origin and the dispute parties are also the same.

XXI. OBJECTION TO INEFFECTIVENESS OF AN ACTION

According to paragraph 7 of Article 73 of labor procedure « if the dispute has no legal effect on substantiation », then it will be considered as objections that leads to adjourning of procedure.

However, if the initiated action considered to be substantiated, and has no effect, the objection will be of ineffectiveness of the action (paragraph 7 of Article 84 of civil procedure code) for example the plaintiff don't claim that the defendant has gifted some property for him but doesn't deliver him them. In this case, if the plaintiff's claim is substantiated, again, it has no effect, because in term of gift contract won't be accomplished (Mohajeri, 2002, P.369).

C) Objection causing abatement of action:

XXII. OBJECTION TO NON – BENEFICIARY OF PLAINTIFF

According to paragraph 10 of Article 73 of labor procedure; « if the plaintiff is beneficiary in an action » as it was explained before, one of the basic conditions of initiating an action, is the beneficiary of plaintiff, namely if the action is considered to be substantiated, it should have a benefit for plaintiff in substantiating, then the defendant can object and the forum is obliged to dismiss the action.

XXIII. OBJECTION TO NON – LEGITIMACY OF AN ACTION

Law never respect an illegal matter and, inevitably, no action is accepted in substantiating benefits lacking legitimacy, on this basis, in new labor procedure, paragraph 8 of Article 73 has laid down one of the cases lacking hearing as « if the matter is illegal ».

XXIV. OBJECTION TO NON – DOGMATIC OF THE ACTION

One of the other raised objections in paragraph 9 of Article 84 of civil procedure code is that the action is not dogmatic, but a probable, i.e., the plaintiff has no definite claim about creating right that the claimant refuses or wastes it, for example, if the plaintiff just presumes that the defendant owes him some money, the objection of non – dogmatic of the action is raised, then (Shams, 2002, P.467) and thus, in paragraph 8 of Article 73 of labor procedure points to this significant matter and declares: « the action is not definite but a probable », so, in this case, his claim is dismissed and is consistent with just procedure proceedings.

XXV. OBJECTION TO THE TIME OF FILING AN ACTION

Sometimes, law signifies some rules that the right claimant should file an action to demand for his / her right according to those rules, otherwise his action filing won't be heard. For example: law – maker in Article 20 of labor law has laid down that if the employee won't declare to employer his readiness to do his function with no justifiable excuse maximum 30 days after removing the suspension or he won't refer after referring and refusal of employer to discretionary board, he will be recognized as resigned.

The labor procedure, based on the special conditions governing it, initiating an objection is one of some conditions which according to article 73 of above – mentioned procedure: "the defendant can object before entering into the nature of dispute." Thus, based on this, it is possible to occur a responsive pleading at the same time of procedural defense in labor procedure and if it fails, it can follow responsive pleading. According to the labor procedure which considers the principle of non – officialness of hearing and contrary to civil procedure has not laid down certain conditions for filing an objection. Thus, the dispute parties can declare in any juncture of hearing and no certain time has been laid down in labor procedure unlike the one in Article 87 of civil procedure code which was predicted to be so and the reason is non – officialness of trial. Thus, based on this, Article 76 of labor procedure has laid down that; « plaintiff or defendant can object in any stage of hearing ». However, what is required to be mentioned in Article 76 of labor procedure is that expressing proceeding objections have not been limited until the end of first session of trial.

The reason for strictness of Article 77 is observing the speed and non – officialness of trial in labor disputes. With regard to the mode of comply these articles it can be seen that codifiers of labor procedure have closely been familiar with the mentioned principles and civil procedure code. Thus, a close looking at pending articles in this regard, labor procedure is consistent with just procedure principles forum duties against objections:

According to Article 77 of labor procedure, the objection be in the first session of trial and before termination of negotiations, if it is after the determinate period of time, the authority has no duty, even no right to notice the objection, if there is no objection in the case of local competence, but the authority finds his own incompetency, then s/he should make a decision in the first session of trial and before termination of negotiations based on acceptance or rejection of dispute and if s/he becomes silent, s/he cannot, after the end of the due date. Avoid hearing the dispute due to incompetency and if so, s/he has committed a fault. According to Article 80 of labor procedure: « if there are causes of challenging refusal, the authority should inform the director of cooperation, labor and social welfare, according to the mentioned person's request, the member of other authority who hold the same representative (employee, employer or government) due to the refused member will participate in decision – making session and trial. » Article 78 of labor procedure

expresses: « the authority before entering into the nature of dispute in relation to the objection he will try to make a hearing. whenever the authority finds the objection as a valid one , he will avoid hearing based on paragraph 2 of Article 73 and transfers the case to an authority which the dispute runs there and for other paragraphs of Article 73 tries to enter a dispute refusal order . »

The reason for strictness of Article 77 is the observance of speed and non – officialness of trial in labor disputes. By a close look at the mode of comply these articles it can be seen that the compliers of labor procedure are closely familiar with mentioned principles and civil procedure code. Thus, regarding the pending materials it is clear that, in this case, labor procedure is consistent with just procedure principles.

XXVI. DUTIES OF FORUM AGAINST OBJECTION

According to Article 77 of labor procedure , the objection should be in the first session of trial and before termination of negotiations , if it is after the determinate period of time , the authority has no duty nor right to notice the objection , so if , there is no objection in local competency , but the authority finds himself as an incompetent in this case , he should make a decision about the acceptance or refusal of dispute in the in the first session of trial and before the termination of negotiations and if he keeps quiet , he cannot avoid the hearing due to his incompetency after the end of due date and if he does so , then he commits a wrong – doing According to Article 80 of labor procedure : « if there are causes of refusal , the authority should make the director of cooperation , labor and social welfare inform of the matter and member of other authorities can take part in hearing session and trial was the same representative (employee , employer or government) due to the request of mentioned person » . Article 78 of labor procedure expresses:

The authority will make a decision before entering into the nature of dispute related to objection and if he does not accept the objection, then he will try to make a hearing. Whenever the authority finds an objection as a valid one, then he will avoid hearing the dispute in the case of paragraph 2 of Article 73 and sends the case to an authority in which the case runs and about the other paragraphs of Article 73 he tries to enter a dispute refusal order.

XXVII. CONCLUSION AND RECOMMENDATIONS

The present Article discussed about principles and rules that their trials about dispute between parties of labor. e. Employer and employee or trainee was based on former procedure or based on present labor procedure. And it is important to know how inconsistent lays between hearing in dispute settlement authorities of employer and employee with just procedure principles and standards , first we should say that just procedure principles , are principles that their series , leads the judicial system to its purpose that is justice establishment and include ; principle of impartiality of judges , right to counsel , right of defense for parties , rule of law and judgment in a reasonable and legal time , and the rendered judgment for a convict or his attorney is delivered legally or truly , and making appeal is gained for the parties ... and the society is consent .

Thus , based on this , position of labor procedure authorities has been reviewed in some of the trial authorities , and they compared and studied mode of formation of meeting of discretionary and dispute settlement boards approved in 2001 (former) and labor procedure approved in 2013 (new) and the results show that labor procedures , according to resulted conditions during the time and development of economy and workshop and working centers , regarding the nature of relationship between employer and employee and observing the principles , they should administer the followings : speed of trial , specialization and technique of trial , non – official-ness of trial and observing teralism and participation of parties' representatives in trial and lack of charging expenses of trial to disputes of employer and employee .

REFERENCES

- [1] Amid, Hassan, *Amid Dictionary*, Tehran, Amir Kabir, Tenth Edition, 1997. Bahrami, Bahram, *Civil Procedure* "use", Tehran, Binet publications 2006. Jafari Langroodi, MJ, *terminology of Law*, Tehran, Ganj-e-Danesh publications Sixth Edition, 1993. Dehkhoda, Ali Akbar, *Dictionary*, Tehran publications , Dehkhoda Dictionary Institute, 1986.
Elahiyan, MJ, *questions and answers in the field of labor relations*, Labor and Social Welfare Institute press, Third Edition, 2004.
- [2] Elahiyan, MJ, *precedents of the Court of Administrative Justice and the Supreme Court on issues of labor and social security*, labor and social security institutions, first edition 2002.
- [3] Ghamami, M. and M. Hassan, *the principles of international procedure*, Tehran, Nashr-e-Mizan, first edition, winter 2007.
- [4] Ghamami, M. and M. Hassan, *the principles guaranteeing the democratic functioning of the procedure and principles relating to the characteristics of civil procedure*, the Faculty of Law and Political Science at Tehran University, No. 74, Winter 2006.

- [5] Katoozian, N, proof and evidence, Volume I, Tehran, Nashr-e-Mizan, second edition, 2003. Karimi, A., civil procedure, Tehran, Mizan publications, 2007.
- [6] Madani, Jalal-Al-addin, civil procedure, Tehran, Ganj-e- Danesh, Third Edition, Volume II, 1993. Madani, Sayyed Jalal-Al-addin, Evidence of dispute proof, Paydarpublicatons, Fifth Edition, 2000. Moein, Mohammed, Persian culture, Tehran, Amir Kabir Publishing Institute, Seventh Edition, 1985. Mohajeri, Ali, Explanation of the Civil Procedure Code, Volume I and II, Tehran, Ganj-e-Danesh, Second Edition, 2002.
- [7] Shams, Abdullah, Code of Civil Procedure, "a two-volume", Tehran, Nashr-e-Mizan, second edition, 2002.
- [8] Shams, Abdullah, civil procedure, Tehran, Drake, 2005, Third Edition, Volume III. Shams, Abdullah, civil procedure, Tehran, Drake, 2008, the eleventh edition, Volume III. Vahedi, Qodrat-allah, civil procedure, first volume, Tehran, first edition, Mizan Publications 1998. Vahedi, Qodrat-Allah, imperatives of Civil Procedure, Tehran, Mizan Publications, Third Edition, 2003. Zera'at, Abbas, the Civil Procedure Code in the Iranian legal system, Khatt-e-sevvompublications, 2004. **Leaflets:** Moradi, B. "authorities dispute settlement procedures of the Labor Code and the Administrative Justice Court" Tehran, Labor and Society Publications, No. 116 and 117 in February 2009. Naimi Seyyed Morteza, educational pamphlets, civil procedure, Islamic Azad University, Science and Research Rasht academic year 2013-2014.

Rules:

Constitution of the Islamic Republic in 1978.

The procedure of public and revolutionary courts first book - in civil matters ratified 2000/1/21. Civil law

Labor Law of Islamic Republic of Iran adopted on 1990/8/21 Expediency Council.

2006/3/9 Parliament adopted Law on Administrative Justice Court.

Law enforcing civil Act 1977.

Law on Administrative Justice Court approved on 2013/3/25.

The law of arbitration councils approved 2008/4/18 Judicial and Legal Commission of the Islamic Consultative Assembly.

The Labor Law in 1998.