

Republic of Iraq
Federal Supreme Court
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The Federal Supreme Court (F S C) has been convened on 13/6/2023 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayooob Abbas Salih, Abdul Rahman Suleiman, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Ali Fakhri Abdul Hamza.

The Defendant: the Prime Minister/ being in this capacity – his agent the legal counselor Qassim Suhaib Shakoor..

The Claim

The plaintiff claimed in his petition that Diwani Order No. (128) dated 9/4/2023, which includes: terminating his assignment from his duties as vice president of the Military Industrialization Authority and returning him to his previous job in the Ministry of Agriculture, is contrary to the law for detailed formal and objective reasons, the conclusion of which is as follows: 1. Its issuance in accordance with the powers vested in the Prime Minister based on the Council of Ministers Resolution No. (71 of 2011), which did not include granting any powers to the Prime Minister by assignment or termination of assignment at all for general managers or special grades. 2. Violating Article (1) of the Public Holidays Law, as it was signed by the Secretary-General of the Council of Ministers on 7/4/2023, which coincides with (Friday). 3. Violating Article (13) of the Federal Financial Management Law No. (6) of 2019 and the Ministry of Finance Circular No. (75555 on 27/12/2022), which obligated to stop the transfer of employee services between ministries and entities not associated with a ministry or between its affiliated formations, as the Ministry of Finance rejected the request of the Military Industrialization Commission and the request of the Ministry of Agriculture regarding the transfer of the job grade and financial allocation,

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and what was stated in the direct order issued by the Mesopotamian State Company - to which it is transferred - that the grade and financial allocation are not available to the plaintiff. 4. Violation of reality regarding the reliance on the issuance of the Diwani order for the public interest, especially since the plaintiff - according to the claim - has functional experience in the field of military manufacturing in addition to his legal duties entrusted to him when occupying the duties of the deputy head of the Commission, while the position is currently vacant and managed by the director of the technical department in addition to his duties (conduct of business). 5. The appealed Diwani order came two days after it began (one of which is an official holiday), as its commencement date is on 5/4/2023, based on the Supreme Administrative Court's decision No. (1306/2023 on 29/3/2023), according to which it canceled the ministerial order, which considered the plaintiff resigned, for abuse of power, and for incompatible with good faith because it was issued by the defendant without any recommendation from the head of the Commission in accordance with the contexts followed in all state ministries and entities not associated with a ministry, so the plaintiff asked this court Ruling on the invalidity and cancellation of Diwani Order No. (128 on 9/4/2023). The lawsuit was registered with this court at number (112/federal/2023), and the legal fee was collected for it, and the defendant was informed of its petition and documents in accordance with Article (21/1st and 2nd) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and his agent replied with the reply regulation dated 8/6/2023, its conclusion is that considering the lawsuit is outside the jurisdiction of the court stipulated in Article (93) of the Constitution, and since the matter is related to the appeal to cancel a Diwani order for violating the law, it falls within the jurisdiction of the Personnel Justice Court in accordance with Article (7/4th) of the State Council Law No. (65) of 1979 as amended, whereas the plaintiff has filed a lawsuit with the same subject before the Personnel Justice Court on 12/4/2023, which is a date prior to the filing of this lawsuit before the court, and thus it is not permissible to file one lawsuit

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in more than one court if it is filed in more than one court, the lawsuit petition filed first is considered and the other petition is invalidated based on article 76 of the Civil Procedure Law No. 83 of 1969 (and its amendments), and the termination of the plaintiff's assignment came based on the public interest and the approval of the Prime Minister following of the powers vested in him based on Cabinet Resolution No. (71) of 2011 and the powers granted to him under Article (78) of the Constitution as the direct executive officer of the state's general policy, especially since the plaintiff is charged, and the body that assigned him has every right to terminate his assignment in line with the principle of running the public facility because he has the discretionary power to assign whomever he deems appropriate or terminate his assignment following the public interest and the proper functioning and continuity of the public facility, especially since this authority is subject to the control of the Federal Supreme Court under Article (93) of the Constitution, in addition to the fact that the Diwani order - the subject of the challenge - was signed by the Secretary-General of the Council of Ministers on 7/4/2023 and then issued on 9/4/2023 (Sunday), whereas the official books are the date of their issuance, however, there is no legal impediment to signing and issuing official books on official holidays, based on Article 56 of the Civil Service Law No. 24 of 1960 (as amended), and the Ministry of Finance's publication numbered No. 75555 dated 27/12/2022 is precautionary measures and is not suitable to be a legal basis for stopping appointment, transfer, promotion, or granting bonuses as long as ministries and entities not associated with a ministry are committed to disbursement within the mechanism stipulated in item (first) of article 13 of the Federal Financial Management Law No. 6 of 2019 (as amended) whereas the appealed Diwani order was issued based on the approval and guidance of the Prime Minister in accordance with his constitutional powers, for all of the above, a judgment is requested to dismiss the case. After completing the procedures required by the court's rules of procedure, a date was set for the consideration of the case without pleading in accordance with Article (21/3rd) thereof, and on the

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appointed day, the court was formed and the case began to be considered, the court checked what was stated in the plaintiff's petition, requests and substantiations, and what was stated in the defendant's defenses contained in his attorney's regulation dated 8/6/2023 and his request to dismiss the lawsuit for the reasons stated therein, and since the court completed its investigations, the end of the argument has been made clear and issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff Ali Fakhri Abdel Hamza had filed the lawsuit before this court to challenge the validity of the Diwani Order No. (128 on 9/4/2023) issued by the General Secretariat of the Council of Ministers, which included terminating his assignment from the position of Vice President of the Military Industrialization Authority and returning him to his previous job in the Ministry of Agriculture, claiming that the aforementioned Diwani order was based on Cabinet Resolution No. (71) of 2011, which did not include any powers for the Chairman of the Acting Ministers or Termination of Assignment, also, the Diwani order - the subject of the lawsuit - was signed by the Secretary-General of the Council of Ministers on 7/4/2023, which falls on Friday, which is an official holiday, and it is not permissible to practice the work of the job during it, in addition to violating the provisions of Article (13) of the Federal Financial Management Law No. (6) of 2019 and contrary to the uncles of the Ministry of Finance No. (75555 on 27/12/2022), which included stopping the transfer of employee services between ministries and entities not associated with a ministry or between its affiliated formations, the said Diwani order also collided with the lack of job grade and financial allocation of the plaintiff in the Ministry of Agriculture, and the plaintiff stated in his lawsuit that the impugned order was based on the requirements of the public interest, which he finds to be unavailable in it, because the

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aforementioned order has left the position of Vice President of the Military Industrialization Commission vacant despite a large number of tasks and duties exercised by the Vice President of the Authority, in addition to the experience, efficiency, integrity, and job service of the plaintiff that qualifies him to occupy this position as stated in his lawsuit, so he requested to invite the defendant (Prime Minister / being in this capacity) to plead and rule that Diwani Order No. (128 on 9/4/2023) is invalid and canceled, the defendant's attorney answered in addition to his job under his list No. (Qaf/2/2/68/26544 on 8/6/2023) requesting the dismissal of the plaintiff's lawsuit from a formal point of view, as it is outside the jurisdiction of this court and falls within the jurisdiction of the Personnel Justice Court based on the provisions of Article (7/4th) of the State Council Law No. (65) of 1979, as amended, and also requested the dismissal of the lawsuit from an objective point of view, since the termination of the plaintiff's assignment came based on the powers granted to the Prime Minister following Article (78) of the Constitution, the Diwani order - the subject of the challenge - was issued on Sunday 9/4/2023 and not on Friday, and that the circular of the Ministry of Finance referred to by the plaintiff in his lawsuit included precautionary measures that are not suitable as a legal basis for stopping appointment, transfer, promotion or granting bonuses to employees as long as the ministries and entities not associated with a ministry are committed to disbursement within the mechanism stipulated in item (first) of Article (13) of the Federal Financial Management Law No. (6) For the amended year 2019, the Federal Supreme Court finds that the plaintiff's lawsuit falls within its jurisdiction based on the provisions of item (third) of Article (93) of the Constitution of the Republic of Iraq for the year 2005 and Article (4) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 and it is also admissible in terms of litigation because the plaintiff and (the defendant/being in this capacity) are legal opponents who meet the conditions of litigation and have the legal capacity to litigate, the court also finds that the plaintiff's interest in this lawsuit is realized in accordance with

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the provisions of Article (6) of the Civil Procedure Law No. (83) of 1969, as amended, and the provisions of Article (20) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, as for the plaintiff's request, the court found that it is obligatory to respond for the following reasons:

1. There is nothing prejudicial to the validity of the appealed Diwani Order based on Cabinet Resolution No. (71) of 2011 because the aforementioned decision obliges the Council of Ministers to work on reforming the performance in ministries and state institutions, which is consistent with the text of Article (78) of the Constitution, which states: (The Prime Minister is directly responsible for the general policy of the State, ...).
2. The Diwani order was issued on Sunday 9/4/2023 and not on Friday 7/4/2022, and this is confirmed by the plaintiff in his lawsuit as he requested a ruling on the invalidity and cancellation of the Diwani Order No. (128 on 9/4/2023).
3. The challenged Diwani order did not violate Article (13) of the Federal Financial Management Law No. (6) of 2019, because it is not related to the subject matter of the lawsuit, but rather to the percentage of disbursement if the Federal Budget Law is not approved.
4. The appealed Diwani order did not violate what was stated in the Ministry of Finance circular No. (75555 on 27/12/2022) which included stopping the transfer of employees between ministries and entities not associated with a ministry, as the appealed Diwani order did not include an order to transfer the plaintiff, but rather included the termination of his assignment from the duties of the Vice President of the Military Industrialization Authority and his return to his previous job in the Ministry of Agriculture.
5. The challenged order shall not prejudice the validity of the order - the request of the Ministry of Agriculture to transfer the grade and allocation from the Military Industrialization Authority to it, especially since this is facilitated after the adoption of the Federal Budget Law, which are administrative procedures that must be implemented to enforce the contested Diwani order.
6. The assessment of the public interest belongs to the administration and the body that ordered the

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assignment of the plaintiff to the position of vice president of the Military Industrialization Corporation has the right to terminate this assignment, and that discretion is subject to judicial control, and through the scrutiny of the court has found that what applies to the head of the Military Industrialization Corporation applies to the vice president in terms of the requirement that he has experience in the work of the body for at least (15) years, this condition is not fulfilled in the plaintiff, as he is entrusted with the duties of the position of vice president of the authority based on the Diwani order No. (219 on 7/5/2020) after he was an employee in the Ministry of Agriculture, which is the same reason on which the court relied in its decision No. (198/Federal/2022 on 13/11/2022), which included the invalidity of the Diwani order assigning Muhammad Sahib Al-Daraji to the duties of the head of the Military Industrialization Agency Agency, in addition, the plaintiff had previously been referred to the An investigation that issued its recommendations on 5/9/2022 approved by the head of the Military Industrialization Commission and sent to the Prime Minister's Office according to the Commission's letter No. (692 on 8/9/2022) Due to the plaintiff addressing a foreign party and recommending it to cooperate with the Golden Path Company claiming that it has a partnership with the Military Industrialization Commission, the investigative committee recommended that he be relieved of his position as Vice-Chairman of the Commission because his stay causes harm to the public interest, and recommended that he be removed from office in accordance with the provisions of Article 8/2nd) of the State Employees Discipline Law No. (14) of 1991, as amended, for addressing foreign bodies without obtaining due approvals and referring him to the judiciary to take legal action against him. For all of the above, and by request, the Federal Supreme Court decided to dismiss the lawsuit of the plaintiff Ali Fakhri Abdel Hamza for lack of prejudice to the validity of Diwani Order No. (128 on 9/4/2023), and to charge him the fees, expenses, and attorney fees of the defendant's agent (Prime Minister /

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being in this capacity) Legal Counsel Qasim Suhaib Shakur an amount of (one hundred thousand) dinars. The decision has been issued unanimously, final, and binding for all authorities according to the provisions of Articles (93/3rd and 94) of the Constitution of the Republic of Iraq for 2005 and Articles (4 and 5) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been edited on the session dated 24/Dhul Qaeda/1444 Hijri coinciding 13/June/2023 AD.

Judge

Jassim Mohammed Abbood
President of the Federal Supreme Court

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