

Republic of Iraq  
Federal Supreme Court  
Ref 116/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 13/5/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jaber Abid, Hayder Ali Noori, Khalaf Ahmed Rajab, Ayoob Abbas Salih, Dyar Mohammed Ali, and Munther Ibrahim Husain who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Saeed Yassin Moussa - His agent the barrister Mohammed Majeed Rassen.

The Defendants: 1. Minister of Finance / being in this capacity - His agent the official jurist Amer Abbas Qadir.

2. Chairman of the National Pension Authority / being in this capacity - His agent the legal adviser Hanan Saadoun Abbas.

**The Claim:**

The plaintiff claimed through his agent that the constitution affirmed in Article (14) that Iraqis are equal before the law without discrimination, no one may be discriminated against another in any of the rights, and accordingly, this principle was embodied in the Unified Retirement Law No. (9) of 2014, where it made the mechanism for calculating the rights of retirees referred to retirement before the entry into force of the law or their successors under the formula for calculating the retirement salary stipulated in article (21) thereof, based on what is stated in paragraph (third) of article (35) of the same law, and therefore this law obligated to work under it to achieve equality stipulated in the Constitution, and the Constitution obligated the State to take the necessary measures to achieve the principle of equal opportunities, as it is a right guaranteed to all Iraqis, and granting a right to one individual over another is a violation of that principle this constitutes a clear and explicit constitutional violation, as the retirement rights granted to the plaintiff

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who was transferred to retirement before the entry into force of Law No. (9) of 2014, It was not calculated based on the equation stipulated therein, and therefore it was not granted the same rights granted to his peers from retirees referred to retirement after the entry into force of the law, which gives a tendency to distinguish between him and his peers contrary to the constitutional principle, for example, the non-localization of retirees' salaries before the enactment of this law and their non-inclusion in the benefits that included retirees after the issuance of the law, so the plaintiff asked this court to rule obliging the defendants to apply what was stated in paragraph (3<sup>rd</sup>) of Article (35) of the Unified Retirement Law. No. (9) of 2014, and granting him rights based on that, similar to his peers who were referred to retirement after the law came into force, and charging the defendants fees, expenses and advocacy fees, and after registering the case with this court No. (116/Federal/2024) and collecting the legal fee for it, and informing the defendants of its petition and documents in accordance with Article (21/1<sup>st</sup> and 2<sup>nd</sup>) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, the second defendant's agent replied in the reply statement dated 5/5/2024 to its conclusion: Since the entry into force of the Unified Retirement Law No. 9 of 2014, the second defendant's agent has amended all the salaries of retirees referred to retirement before the law came into force, based on the provisions of article (35/3<sup>rd</sup>) thereof, in order to achieve the principle of justice and equality among all retirees so that there is no disparity in the salaries of retirees referred before the law came into force it was calculated in accordance with its provisions, and the Unified Retirement Law ensured the way of appeal, and retirees can resort in the event of failure to obtain their rights to the Retirement Audit Board and the Council's decision is subject to the control of the Federal Court of Cassation based on the retiree's appeal

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against the Council's decision in accordance with Articles (29 and 30) of the aforementioned Retirement Law, as well as Article (93) of the Constitution specified the competences of the Federal Supreme Court, including the issue of applying the provisions of the Retirement Law, so she asked the court to reject the plaintiff's lawsuit, for lack of jurisdiction. After completing the procedures required by the Rules of Procedure of the Court, a date has been set for the pleading in accordance with Article (21/3<sup>rd</sup>) thereof, and the parties have been notified of it, and the court was formed, so the plaintiff and his agent attended, and the defendants' agents attended, and the public presence pleadings began, the plaintiff and his agent repeated what was stated in the lawsuit petition and requested a judgment according to which the first defendant's agent answered by presenting a response list dated 13/5/2024, according to which he requested to reject the lawsuit for the reasons stated therein, the second defendant's agent answered requesting to reject of the lawsuit for the reasons stated in its regulation dated 5/5/2024, and after the court heard the statements and requests of each party and completed its scrutinies, the end of the argument has been made clear, and the court issued the following decision:

### **The Decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff filed a lawsuit before this court against the first defendants, the Minister of Finance, and the second the President of the National Pension Authority / in addition to their positions, to demand that they be obliged by virtue of the application of paragraph (third) of article (35) of the Unified Retirement Law No. (9) of 2014, which stipulates that ((Third: The retirement salaries of retirees referred to retirement before the entry into force of this law or their successors shall

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be recalculated according to the formula for calculating the retirement salary stipulated in Article (21). of this law)), and granting him his retirement rights accordingly, similar to his peers who were referred to retirement after the entry into force of the law, in application of the provisions of Article (14) of the Constitution, and charging the defendants / being in this capacity fees, expenses and advocacy fees. The Federal Supreme Court finds that the plaintiff's lawsuit must be dismissed, for lack of jurisdiction, as the powers and competencies of this court are exclusively stipulated in Articles (52 and 93) of the Constitution of the Republic of Iraq of 2005, and Article (4) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 and some other special laws, as the jurisdiction of the court is held in accordance with the provisions of Article (93/1<sup>st</sup>) of the Constitution in monitoring the constitutionality of the laws and regulations in force in order to decide on their constitutionality or not when appealing the constitutionality of the laws and regulations in force only and not exceeding that competence to other legislation, and that competence shall not exceed the obligation to apply them, the same applies to the jurisdiction of this court referred to in Article (93/3<sup>rd</sup>) of the Constitution and article (4/3<sup>rd</sup>) of the Court Law No. (30) of 2005, as amended. Concerning the adjudication of cases arising from the application of federal laws, this jurisdiction does not go to oblige the application of federal laws without adjudicating the cases arising from their application, and since the plaintiff requested in the lawsuit petition to oblige the defendants / being in their capacity to apply what was stated in paragraph (3<sup>rd</sup>) of article (35) of the Unified Retirement Law No. (9) of 2014, which makes it impossible to respond to the request and rule accordingly, for lack of jurisdiction, as well as the plaintiff's request to oblige the defendants / being in their capacity to grant him his

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retirement rights like his consorts who were referred to retirement after the effective of Unified Retirement Law No. (9) of 2014, because the court also lacks jurisdiction to do so for the reasons referred to above, and therefore his claim must be rejected, for lack of jurisdiction, especially that the Unified Retirement Law No. (9) of 2014 specified the way in which the retiree can obtain his retirement rights, and in the event that he is not convinced of the retirement rights set for him, he can intercept before the Retirement Audit Board and the Council's decision shall be subject to the supervision of the Federal Court of Cassation (The Cassation Authority for Auditing Retirees' Cases) based on the retiree's appeal against the Council's decision according to the articles (29 and 30) of the aforementioned Retirement Law, and in view of the above, the Federal Supreme Court decided the following:

First: Ruling to reject the plaintiff Saeed Yassin Moussa lawsuit for lack of jurisdiction.

Second: Charging the plaintiff expenses, fees and attorneyship fees of the defendants' agents / being in their capacity the official jursits Amer Abbas Qadir and Hanan Saadoun Abbas an amount of one hundred thousand dinars distributed in accordance with the law.

The decision has been issued unanimously, final and binding on all authorities on the basis of the provisions of articles 93 and 94 of the Constitution of the Republic of Iraq of 2005 articles (4 and 5/2<sup>nd</sup>) of the Federal Supreme Court Law No. (30) of 2005, as amended law No. (25) of 2021 and it has been made clear on 4 Dhu al-Qi'dah 1445 A.H. corresponding to 13/5/2024 AD.

**Judge**  
**Jasem Mohammad Abbood**  
**President of the Federal Supreme Court**

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