

Republic of Iraq
Federal Supreme Court
Ref 12/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 21/2/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jaber Abid, Hayder Ali Noori, Khalef 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: Yahya Shleij Lafta Hassan.

The Defendants: 1. The Prime Minister / being in this capacity – his agent the legal adviser Qasim Suhaib Shakour.

2. Head of the National Board of Pensions / being in this capacity.

The Claim:

The plaintiff pleaded before the Basra Court of First Instance affiliated to the Presidency of the Basra Court of Appeal during its consideration of the lawsuit numbered (2104/Beh/2023) dated 12/12/2023 the unconstitutionality of Article (38/1st/Zin) of the Unified Retirement Law No. (9) of 2014, and the Council of Ministers Resolution No. (333) of 2015, and based on the provisions of Article (18/2nd) of the Internal Regulations of the Federal Supreme Court No. (1) of 2022, the court assigned him to file a lawsuit to that effect, and after paying the legal fee for it, the court accepted it and sent it with a photocopy of the case file to this court attached to the letter of the presidency of the Basra Court of Appeal No. (2104/Beh/Constitutional Appeal/2023) dated 7/1/2024, according to which the plaintiff claimed that the Director General of the National Pension Authority / being in this capacity filed the lawsuit before the Basra Court of First Instance to demand the return of an amount of (17,786,000) seventeen million seven hundred and eighty-six thousand dinars based on the circular of the National Pension Authority

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No. (284 on 25/3/2009) and to Article (38/1st/Zin) of the Unified Retirement Law. No. (9) of 2014, and the Council of Ministers Resolution No. (333) of 2015, this is contrary to the provisions of the Constitution of the Republic of Iraq, as his receipt of the retirement salary was in accordance with a law in force, which is the Law of Governorates not Incorporated into a Region No. (21) of 2008, Article (18) thereof, and that the claim to recover his retirement salaries retroactively has no basis in law because this salary is commensurate with the services he provided during his service and officially, and he has no bad intention when receiving his pension, and he did not commit an act that violates the provisions of the law, so the plaintiff requested from this court to reject the lawsuit numbered (2104/Beh/2023) filed before the Basra Court of First Instance, and disburse the amount due to him in the Basra Retirement Authority No. (3740123007) amounting to (10,640,000) ten million six hundred and forty thousand dinars and contained in the lists sent from the Basra Retirement Directorate to the Court of Integrity, and release his retirement salary withheld since 2015, retroactively because it is suspended by the Council of Ministers Resolution No. (333) for the year 2015, and to rule for him with the lost gain and loss due to the suspension of his salary Retirement contrary to the law, and the benefits of its delay. After registering the case with this court No. (12/Federal/2024) and informing the defendants of its petition and documents in accordance with the provisions of Article (21/1st and 2nd) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, the first defendant's agent replied in the reply dated 30/1/2024 that the court lacks jurisdiction to consider it and that the litigation is not directed towards his client because what the plaintiff claimed did not come from him, the subject of the retirement rights claimed by the Retirement Audit Board is the competence of the Retirement Audit

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Board on the basis of the provisions of Article (29) of the Unified Retirement Law No. (9) of 2014 (as amended), the decisions issued by him are subject to appeal before the Federal Court of Cassation based on Article (30/3rd) of the Unified Retirement Law No. (9) of 2014, as amended, and the court has previously that it issued its decision (36/Federal/2023) on 7/5/2023 and ruled according to it the validity of the Council of Ministers Resolution No. (333) of 2015. 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 which the court was formed and the case was considered, the court scrutinized the plaintiff's requests, his supports and the defenses of the first defendant's agent under the statement attached to the case papers, the court noted that no answer had been received from the second defendant, after the court completed its scrutinies, the end of the minutes 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's lawsuit focused on the request to reject the lawsuit numbered (2104/Beh/2023) filed before the Basra Court of First Instance by the head of the National Pension Authority / being in this capacity and the payment of the amount belonging to the plaintiff amounting to (10,640,000) ten million six hundred and forty thousand dinars at the second defendant department and the release of his retirement salary with held since the year (2015) and retroactively because it was stopped by the Council of Ministers decision No. (333) for the year 2015, and also requested that the defendants be obliged to compensate him for the loss of earnings and losses suffered as a result of the interruption of his pension, and thus obliging them to pay the legal

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benefits resulting from the delay of pensions after their release upon closer consideration by this court, the plaintiff's requests mentioned above were found it must be rejected the competences of this court are defined by 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 from the point of view, so the Federal Supreme Court decided to reject the lawsuit of the plaintiff Yahya Shelij Lafta Hassan and charging him all judicial expenses, including the attorneyship fees of the first defendant's agent, legal counsel Qassim Suhaib Shakur, an amount of one hundred thousand dinars distributed in accordance with the law. The decision has been issued unanimously and final based on the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005, and Articles (4 and 5/2nd) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021 and it has been made clear in the session dated 10/Shaaban/1445 A.H. corresponding to 21/2/2024 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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