

Republic of Iraq
Federal Supreme Court
Ref. 180 / Federal / 2022



The Federal Supreme Court (F.S.C.) convened on 4.10.2022 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Galeb Amer Shneen, Haider Jaber Abed, Haider Ali Noory, Ayoub Abbas Salih, Abed Alrahman Sulaiman Ali, Diyar Muhammad Ali, and Monther Ebrahim Hussain who are authorized to judge in the name of the people, they made the following decision:

The plaintiff: Huda Sajad Mahmud – her attorneys Mohamed Majed AlSaedy and Ahmed Mazen Makea.

The defendants: 1. The prime minister/ in addition to his post – his attorney the legal advisor Qasem Saheb.
2. the minister of work and social affairs/ in addition to his post – his attorney Dhafer Rahem Tarad.

The claim:

The plaintiff claimed, through her attorney, that the first defendant issued the dewani order No. (89) on 11.3.2021 to assign her the position of the head of the Social Protection Agency in the ministry of work and social affair (before the end of the council of representatives work and before the government become daily caretaker) and after she started her duties and tasks the second defendant formed an investigation board on 14.10.2021 by the ministerial order No. (2135) on 17.10.2021 which included suspending her

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from the job for (60) days, which the minister relied on when issuing the recommendation of the mentioned board to the office of the first defendant of ending her assignment, so the letter of the prime minister No. (21805) was issued on 16/12/2021, and ministerial order No. (2976) on 21.12.2021 which included transforming her from the ministry of work and social affairs to the ministry of scenes and technology and assigning her the duty of (Advisor to the Ministry of Science and Technology). The decision of the Personnel Judiciary Court No. (3036/mim/2021) was issued on February 28, 2022, which includes the cancellation of the decision to withdraw her hand No. (2135), which gained the degree of definite after ratification by the Supreme Administrative Court according to its decision No. (1017/Employee Judiciary - Cassation/2022 on 06/29/2022), and the decision of the Employees Judiciary Court was issued in the case numbered (15/mim/2022 on 5/08/2022) regarding the cancellation of the letter of the Prime Minister's Office No. (21805) in 12/16/2021 and Executive Ministerial Order No. (2976) dated 12/21/2021, which gained a final degree after ratification by the Supreme Administrative Court under its decision No. (1455/Employee Judiciary - Cassation/2022 on 06/29/2022) and after ten Days from the issuance of the decision of the Employees Judiciary Court No. (15/mim/2022) on 5/08/2022, the Diwani Order No. (469) was issued on 5/18/2022, which includes the termination of her assignment from the tasks of the head of the Social Protection Authority and the assignment of (Sana Muhammad Hamid) with the tasks (management) of the aforementioned

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body, and this leads to the weakening the employee's stability because the relationship is a problem Regulatory power with no reason to terminate its assignment, as Ministerial Order No. (954) was issued on 7/21/2022, which included what was stated in the Diwani Order (469) subject to appeal, and as this contradicts what was stated in the text of Article (64/second) from the constitution, which confirmed that when the Council of Representatives is dissolved, the Council of Ministers is considered resigned and continues to conduct daily affairs and that this term has previously been clarified by the Federal Supreme Court in its decision No. (121 / Federal / 2022) on 5/15/2022 that the government is in this case. Her powers are limited and restricted, and she is not entitled to appointment or exemption from high positions in the state, and since the decisions and orders issued against her (ie, the plaintiff) involve political reasons and motives, and this procedure is contrary to the text of Article (42) of the internal system of the Council of Ministers No. (2) for the year 2019 that her assignment by a government with all powers and that the termination of her assignment came from a government that does not have the power to do that procedure according to what was stated in the Federal Supreme Court decision No. The constitutionality of Diwani Order No. (469) as it contradicts the Constitution, the law, the internal system of the Council of Ministers, and the final decisions of the Federal Supreme Court and binding on all authorities under Article (94) of the Constitution, as well as contrary to the decisions of the administrative courts and charging the defendants fees,

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expenses and attorney fees The lawsuit was registered with this court in the number (180/Federal/2022), and the legal fee was collected for it following the provisions of Article (21/First) of the Federal Supreme Court's internal system No. (1) of 2022 and informs the defendants of its petition and documents following Paragraph (Second) of The same article above, the representative of the first defendant replied with the answer statement dated 7/9/2022, which summarized that the termination of the mandate of the plaintiff based on the requirements of the public interest and following the recommendations of the investigative committee formed in the Ministry of Labor and Social Affairs against her due to the unfounded accusations against the Minister of Labor and Social Affairs of health, as well as highlighting official documents in the media related to the work of the ministry, which means its loss of the necessary competence to manage the position and its inability to manage it. The executive authority has the right to work within the framework of the principle of legality and the rule of law, even if it uses its discretionary power in order to accomplish its tasks, that use is not absolute, but rather restricted in The limits of control exercised by the constitutional institutions, including the Federal Supreme Court, in application of the provisions of Article (93/Third) of the Constitution, and that issuing a decision that includes assigning a person appointed by the Prime Minister must have competence, which was not proven by the plaintiff in accordance with the recommendations of the investigative committee The aforementioned, and there is no connection between the

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decisions of the Supreme Administrative Court mentioned in the plaintiff's list and the Diwani order in question because the latter came later to those decisions and because the subject matter of the case under appeal differs from the subject matter of the case, which is the subject of the Supreme Administrative Court's decisions, and therefore the reliance on it has no basis in the Constitution and the law And that the termination of the assignment from the management of the Social Protection Authority does not fall within the concept of appointment, exemption or restructuring of ministries stipulated in Article (64) of the Constitution and Article (42/second) of the internal system of the Council of Ministers, and this was confirmed by the Federal Supreme Court in its decision No. (120/federal/2021), rather it falls under the discretionary authority of the Prime Minister, even though his client has used his discretionary authority without exceeding its scope, so he requested to Reject the plaintiff's lawsuit and charge her the expenses, fees, and attorney's fees. After completing the procedures required by the aforementioned rules of procedure of the Federal Supreme Court, a date was set for the pleading and the parties were informed of it, and on the appointed day the court was formed, so the plaintiff and her attorneys attended. The case and they requested a judgment accordingly. The attorney of the first defendant responded and requested the dismissal of the case on behalf of his client for the reasons stated in his list attached to the case papers, and the attorney of the second defendant responded and requested that the case be dismissed on behalf of his client for

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the reasons mentioned in his list attached to the case papers, and each party repeated his previous statements and requests. since there was nothing left to say, the court decided the conclusion of the pleading, and issued the following decision:

The decision:

Upon examination and deliberation by the Federal Supreme Court, it was found that the plaintiff's lawsuit (Huda Sajjad Mahmoud) was focused on the claim of the unconstitutionality of Diwani Order No. (469) issued by the Council of Ministers on 5/18/2022 containing ((1. Ending the assignment of Mrs. Huda Sajjad Mahmoud) for the duties of the head of the Social Protection Authority as an agency in the Ministry of Labor and Social Affairs. 2. Assigning Mrs. (Sana Muhammad Hamid) the tasks of running the Social Protection Authority in the Ministry of Labor and Social Affairs)). By examining the merits of the plaintiff's claim and requests, this court finds that she instituted her claim based on the provisions of Paragraph (First) of Article (93) of the Constitution of the Republic of Iraq for the year 2005 regarding the jurisdiction of this court to consider the constitutionality of laws and regulations in force and that the plaintiff, through her attorneys, has used the phrase ((Judgment of the unconstitutionality of Diwani Order No. (469) as it is contrary to the Constitution, the law, the internal system of the Council of Ministers and the decisions of the Federal Supreme Court)) And since the

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jurisdictions of this court under the paragraphs of Article (93) of the Constitution as well as Article (52) of it are multiple, and each of its competencies has a certain specificity from Where the conditions and procedures and that filing a lawsuit based on any of these paragraphs requires compliance with the operative clause and the conditions and limitations it requires, and since the plaintiff's lawsuit is based on Paragraph (First) of Article (93) of the Constitution and that this paragraph relates to challenging the constitutionality of laws and regulations in force exclusively It does not go beyond other ranks of subsidiary legislation and, a fortiori, does not transcend to the decisions and orders issued by Because the Council of Ministers and the rest of the executive authority's joints, the lawsuit in the form filed by the plaintiff is outside the jurisdiction of this court described in Article (93/First) of the Constitution of the Republic of Iraq for the year 2005, and it is free to respond to this body, and due to the lack of jurisdiction of this court, he decided to reject the plaintiff's lawsuit (Huda Sajjad Mahmoud) and charged her the expenses, fees and attorney fees to the attorneys of the first and second defendants, in addition to their jobs, an amount of one hundred thousand dinars, to be distributed between them in accordance with the law. The decision was issued final and binding on all authorities under the provision of articles

(93 and 94) of the constitution of 2005 and articles (4) and (5) of the Federal Supreme Court Law No. (30) for the year 2005 amended by Law No. (25) for

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the year 2021 and publicly understood on 7/ Rabi' al-Awwal/1444 AH corresponding to 10/4/2022 AD.

Signature of
The president

Jasem Mohammad Abbood