

Republic of Iraq
Federal Supreme Court
Ref. 229 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 27/11/2022 headed by Judge Jassim Mohammed Abood and membership of Judges, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul-Rahman Suleiman Ali, Dyar Mohammed Ali, and Munthir Ibrahim Hussein who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Abdul Latif Hameem Mohammed – his agents the barristers Mohammed Majeed Al-Saidi and Ahmed Mazin Makiya.

The Defendant: the Prime Minister/ being in this capacity – his agent the legal counselor Hayder Ali Jaber.

The Claim

The plaintiff claimed through his agent that he was assigned the duties of the head of the Sunni Endowment under Diwani Order No. (288) dated 23/6/2015 and he assumed his duties from the date of issuance of the order until the issuance of the budget law for the year 2019, which stipulated in Article (58) thereof the termination of the agency file, but this order was applied only to the position of the Sunni Endowment Office, which is originally an exception according to what was stated in the Sunni Endowment Law of 2012, and that he supervised the aforementioned Bureau based on the directive of the Prime Minister under his letter No. (20192) dated 23/12/2019 until the issue of the heads of bodies and entities not associated with the Ministry was resolved, and then the Prime Minister's approval was obtained to continue managing and organizing the work of the Bureau in accordance

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with the law under the letter No. (1914) on 3/2/2020, but the defendant issued Diwani Order No. (123) on 2/3/2020, which included referring him (i.e. the plaintiff) to retirement contrary to the First Amendment Law to the Unified Retirement Law. No. (26) of 2019 is at the rank of the minister as stated in the Sunni Endowment Law, and the defendant issued Diwani Order No. (102) on 20/2/2020, which included assigning (Saad Hamid Kambash) to conduct the daily affairs of the Bureau to fill vacancies in several independent bodies, note that his dismissal from his position as head of the Sunni Endowment Office and the assignment of a replacement came during the period when the government became limited in powers as a (caretaker government) that is not entitled to exemption, appointment or change in senior positions based on the decision of the Federal Supreme Court No. (121/Federal/2022), which confirmed that the caretaker government does not have the authority to appoint or exempt from senior positions, and due to the vacancy of the position of the President of the Bureau after the issuance of the court's decision No. (50/Federal/2022) Including the exclusion of each of (Abdul Khaliq Medhat and Saad Hamid Kambash) from the position of head of the Sunni Endowment Office. Therefore, the plaintiff requested this court to rule on the invalidity and constitutionality of each of the two Diwani orders numbered (123 and 102), to restore the status quo ante and to cancel the legal effects resulting in light of this, and to charge the defendant fees, expenses, and advocacy fees. The lawsuit was registered with this court with the number (229/federal/2022), and the legal fee for it was collected in accordance with Article (21/1st) of the Court's Rules of Procedure No. (1) of 2022, and it informs the defendant of its petition and documents in accordance with item (second) of the same article, and his agent replied with the reply list dated 27/10/2022, which included the court's lack of jurisdiction to consider the subject

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matter of the case based on the provisions of Article (93/1st) of the Constitution and Article (18) of the Court's Rules of Procedure No. (1) of 2022, and that his client issued the Diwani order The subject of the challenge is based on his constitutional powers under Article (78) of the Constitution regarding the referral of the plaintiff to retirement for completing the legal age for referral as he was born in (1952) in accordance with Article (1) of Law No. (26) of 2019 ((The First Amendment Law of the Unified Retirement Law No. (9) of 2014)) and in accordance with Article (1) of the Law of the Sunni Endowment Office No. (56) of 2012, which stipulated that the Bureau is linked to the Council of Ministers, thus, the plaintiff is considered retired under the law and there is no legal basis that allows him to continue to manage and organize the work of the Bureau as an agency, and the State Council Resolution No. (74/2019) dated 26/8/2019 established the principle (the heads of independent bodies are subject to the legal age for retirement) and therefore the referral of the plaintiff to retirement was done in accordance with the law, which is what was done regarding the referral of the rest of the heads of the commissions, including the National Investment Commission, and the Legislative Resolution No. (20) of 1988 considered the employee retired starting from the date of completing the legal age, and it was instructed to all bodies that the entity that allows its employees to continue in the government after they complete the legal age, bears all legal and financial consequences and since the plaintiff was assigned an agency and is not authentically appointed, and therefore the order to terminate his assignment from the Presidency of the Bureau is not prohibited by court decision No. (121/federal/2022), and that assigning an alternative On behalf of the plaintiff is a power of attorney and not authentically, it does not contradict the aforementioned court decision, but it is an application and

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implementation of it as it is one of the decisions and procedures that will continue the work of the public facility regularly and permanently, The court confirmed in its decision No. (122/Federal/2022) that it is permissible to terminate the assignment of the heads of independent bodies by the Council of Ministers after the availability of the legal reasons for doing so in accordance with the law and in a manner that does not conflict with the constitution, so the ruling requested the dismissal of the appeal and charging the plaintiff expenses, fees, and attorney's fees. After the completion of the procedures required by the Rules of Procedure of the Court, a date for the hearing was set in accordance with the provisions of Article (21/3rd) of the Rules of Procedure of the Court, and the parties shall be informed of it, on the appointed day, the court was formed, and the plaintiff's attorney, lawyer Ahmed Mazen Makiya, and the defendant's attorney attended, and the public pleading began, the plaintiff's attorney repeated what was stated in the lawsuit petition and requested a judgment accordingly, the defendant's attorney answered requesting the dismissal of the lawsuit for the reasons stated in the reply list linked to the lawsuit papers, and each party repeated its previous statements and requests, and where there was nothing left to say, the end of the argument has been made clear, and the court issued the following judgment decision.

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the summary of the plaintiff's lawsuit is his request to rule on the invalidity and constitutionality of the two Diwani orders numbered (123) on 2/3/2020 and (102) on 20/2/2020 for the reasons that he detailed in the statement of claim, and after the public adversarial

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pleading, and the court's review of the mutual regulations between the parties and the statements of their agents recorded in control, this court finds that the subject of this lawsuit falls within the specific jurisdiction of the Federal Supreme Court drawn up in Article (93/3rd) of the Constitution of the Republic of Iraq 2005, because the two decisions subject to the appeal are decisions issued by one of the federal authorities represented by the Prime Minister, and therefore each interested party, including the plaintiff, can appeal such decisions as they are prejudicial to the interest of the plaintiff and have an impact on his job status, so this lawsuit is acceptable in terms of the competent authority, but in terms of the validity of these decisions or the extent to which the authority to issue them adheres to the standards of their validity by the existence of the legal basis for their issuance, as well as their issuance by a competent authority, there is no defect in the form and procedures for their issuance. Or the reason for these decisions or their suitability that the authority issuing them has succeeded in making these decisions to the best options available to it, It is what the court will discuss to decide whether or not to answer the plaintiff's claim, and about Diwani Order No. (123) on 2/3/2020 containing the referral of the plaintiff to retirement starting from reaching the legal age, the defendant, in addition to his job, exercised his constitutional authorization specified in Article (78) of the Constitution of the Republic of Iraq for the year 2005, which authorized the defendant to be responsible for the direct implementation of the general policy of the state, including ensuring the implementation of the laws governing the functioning of public utilities and government agencies to ensure the performance of their duties and tasks. Which was established constitutionally and legally, as Article (1), paragraph (first) of Law No. (26) of 2019 ((First Amendment Law of the Unified Retirement Law

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No. (9) of 2014)) stipulated that one of the reasons for referring the employee to retirement is that he completes the legal age by reaching sixty years, and article (4), paragraph (first) of the aforementioned Unified Retirement Law also stipulates that the referral of an employee appointed by a presidential decree or by order of the Council of Ministers, the Prime Minister or the House of Representatives in the manner in which he was appointed, and since the foregoing is a legal obligation to be implemented by the defendant in addition to his job, and this obligation does not prejudice the obligations of the government to conduct daily affairs because the concept of conducting daily affairs does not stop the implementation of the laws enforceable nor It may include a justification for extending the employee's career other than the legal age specified in the foregoing, also, the plaintiff's argument in letter No. (20192) on 23/12/2019, which included a directive from the defendant to continue the plaintiff to supervise the Sunni Endowment Office until the issue of the heads of bodies and bodies not associated with the Ministry is resolved to confer the character of a defect in the decision in question is irrelevant because the defendant may retract a previous temporary decision if it conflicts with the legal provisions in force and in the public interest, which is assumed in the Diwaniyah decisions unless proven by significant evidence to the contrary from the above, the court concludes that That Resolution No. (123) on 2/3/2020 did not have a defect in its form, reason, legal basis, or body that requires the plaintiff's claim to be answered in respect of it. As for the Diwani Order No. (102) on 20/2/2020 assigning Saad Hamid Kambash to manage the affairs of the Sunni Endowment Office, the research into this decision has become useless because the defendant, in addition to his job, had previously terminated the assignment of Saad Hamid Kambash with his decision No. (450) on 6/3/2022, which was the

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subject of the judgment decision issued by this court No. (50/Federal/2022) on 26/7/2022, which ruled to dismiss the plaintiff's lawsuit Saad Hamid Kambash regarding paragraph (1) of the decision, and therefore the lawsuit of the plaintiff in this regard has lost its place. Accordingly, and by request, the FSC decided to reject the case of the Plaintiff Abdul Latif Humaim Mohammed and to burden him with the judicial expenses, including the advocacy fees for the agent of the defendant/ being in this capacity, the legal counselor Hayder Ali Jaber amount of one hundred thousand Iraqi Dinars. The decision has been issued unanimously, final, and binding for all authorities according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 and 5/2nd) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on dated 2/Jumada Al-Awla /1444 Hijri coinciding 27/November/2022 AD.

Signature of
The president
Jasem Mohammad Abbood

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