

Republic of Iraq
Federal Supreme Court
Ref. 231 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 21/11/2022 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, Ayoob Abbas Salih, Abdul-Rahman Suleiman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Nawfal Ghazi Abdul Rahman Abdulla Al-Kaisi.

The Defendant: President of the Supreme Administrative Court/ being in this capacity.

The Claim

The plaintiff claimed in the lawsuit petition that the Supreme Administrative Court of the State Council had previously issued its decision No. (49/Staff Judiciary/ Cassation on 2/3/2022) which included his referral to retirement pursuant to the provisions of Article (21) of the Unified Retirement Law No. (9) of 2014 amended due to its inclusion in the provisions of Article (6 / 3rd and 9th) of the Supreme National Authority for Accountability and Justice Law No. (10) of 2008, where the said court interpreted the text of Article (6/9th) of the Accountability and Justice Law not to refer those covered by the law to Retirement only after being included in retirement benefits Therefore, what the Supreme Administrative Court went to in its interpretation of the aforementioned article is an incorrect jurisprudence and came contrary to the decision of the Federal Court of Cassation, which is competent to consider appeals

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submitted against the decisions of the Accountability and Justice Commission No. (3433/ Cassation Commission /2010 on 9/7/2013) and because there is a conflict and contradiction in the application of laws and judicial decisions issued by the courts of cassation in their various jurisdictions, the plaintiff took the initiative to appeal the said decision, Based on the provisions of Article (4/3rd) of the Federal Supreme Court Law No. (30) of 2005, as amended, for the reasons stated in his petition and requesting this court to annul the decision of the Supreme Administrative Court reversing the decision of the Personnel Justice Court No. (3810/2021 on 21/11/2021) and to continue his job service until he completes the age of (60) years like the rest of the state employees, the case was registered with this court with the number (231/federal/2022). The legal fee was collected based on the provisions of Article (21/1st) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and the defendant was informed of its petition and documents following the provisions of item (Second) of the same article, and his answer was received according to the letter of the State Council No. (3005 on 31/10/2022) it concludes that the decision of the Supreme Administrative Court in question was issued using the court's authority to decide on the subject matter of the case stipulated in Article (214) of the Code of Procedure. Civil No. (83) of 1969, and that the Constitution specifies in Article (93) the competencies of the Federal Supreme Court, not including appealing against the rulings of the Supreme Administrative Court, requesting the dismissal of the case, and charging the plaintiff the expenses and attorney's fees. After completing the procedures stipulated in the Court's Rules of Procedure, mentioned above, a date was set for the pleading in accordance with Article (21/3rd) thereof, and the parties were

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informed of it, and on the appointed day, the Court was formed, and the plaintiff himself attended and the defendant or his agent did not attend, and the public adversarial pleading was initiated, the plaintiff repeated what was stated in the petition and requested a judgment in accordance with what was stated therein, and after the Court completed its audits and nothing was left to be said, 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 plaintiff Nawfal Ghazi Abdul Rahman Abdullah Al-Qaisi claimed that the Supreme Administrative Court issued its decision No. (49 / Employees Judiciary Cassation / 2022 on 2/3/2022) containing his retirement based on the provisions of Article (21) of the Unified Retirement Law No. (9) of 2014 as amended due to its coverage of the provisions of Article (6/3rd and 9th) of the Supreme National Authority for Accountability and Justice Law No. (10) of 2008 and because there is a conflict between two discriminatory decisions One of them was issued by the Federal Court of Cassation competent to consider the appeals of the Accountability and Justice Authority No. (3433/Cassation Commission/ 2010) on 9/7/2013 and the second decision issued by the Supreme Administrative Court No. (49 / Employees Judiciary Cassation / 2022 on 2/3/2022) because the Supreme Administrative Court has interpreted the text of Article (6/9th) of the Accountability and Justice Law No. (10) of 2008 not to refer those covered by the aforementioned law to retirement until after they are included in the

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retirement benefits, referring to Article (21/1st) of the Unified Retirement Law No. (9) of 2014 as amended, and since the aforementioned article is the article that concerns retirement rights and their calculation and has nothing to do with retirement, the most important condition for referral to retirement is the employee's desire to do so. And reaching the legal age, and this is the right diligence, especially with what was stated in the discriminatory decision No. (3433/cassation body/2010) issued by the cassation authority competent to consider appeals submitted against the decisions of the Supreme National Authority for Accountability and Justice, and item (ninth) of Article (6) of the Accountability and Justice Law did not include the referral of those covered by the Accountability and Justice Law to retirement, in addition to that the Unified Retirement Law did not specify the age at which those covered by the Supreme National Authority for Accountability and Justice Law are referred to retirement, so the plaintiff is covered by the conditions of retirement and there is a conflict and it contradicted the application of laws and judicial decisions issued by the courts of cassation in their various jurisdictions and attached to his petition, requesting this court to annul the aforementioned decision of the Supreme Administrative Court that contradicts the decision of the Personnel Justice Court No. (3810/2021) on (21/11/2021), he requested that he continue his career until he completes the age of (60) years, like the rest of the state employees. This court finds that its competencies, functions, and powers have been stated in Articles (52/2nd) and (93) of the Constitution of the Republic of Iraq of 2005, as well as in Article (4) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021, and it does not include within its competencies the requests contained in the aforementioned lawsuit

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petition, so the plaintiff's lawsuit is lacking its legal basis and must be dismissed for lack of jurisdiction. Therefore, the FSC decided to reject the case of the plaintiff Nawal Ghazi Abdul Rahman Abdulla for lack of jurisdiction and to burden him with fees and expenses. 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) 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 26/Rabee Al-Akhir/1444 Hijri coinciding 21/November/2022 AD.

Signature of
The president
Jasem Mohammad Abboud

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