

Republic of Iraq
Federal Supreme Court
Ref. 236 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 19/12/2022 headed by Judge Jassim Mohammed Abbood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Khalef Ahmed Rajab, 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 Plaintiffs: the Engineers, each of Abbeer Hadi Badir, Ashraf Hani Ezz Al-Deen, and others – their agents the barristers Kamil Rashad Flayeh Al-Zubaidi and Qahtan Hasan Sa'adoon Al-Suaidi.

The Defendants: 1- The Prime Minister/ being in this capacity – his agent the legal counselor Hyader Ali Jaber.

2- The Federal Minister of Health/ being in this capacity – his agents Mohammed Jassim Abood and Hassan Huzbir Abdul Hasan.

The Claim

The plaintiffs claimed through their agents that the first defendant issued Resolution No. (233 of 2008) on 26/6/2008 according to which they granted engineering allowances as of 1/7/2008, provided that their total does not exceed (200%) of their salaries, and the allocations were (35%) of the salary for workers in the center of ministries and departments and (50%) of the salary for workers in sites and projects, and on 13/1/2020 Law No. (1) of 2020 was issued (Law No. (Third Amendment to the Law on the Graduation of Medical and Health Professionals No. (6) of 2000) published in the newspaper The Iraqi

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Gazette No. (4571) on 13/1/2020, which stipulates in Article (1/5th) thereof (People with supporting health professions: They are graduates of specializations for the following colleges, departments, branches, and job titles: Zin- Biomedical Engineering. Ha- Medical Apparatus Technical Engineering). Article (4/2nd) thereof states that ((Those covered by paragraph 5th of Article (1) of this law enjoy the same risk allowances granted by their peers with health professionals granted by the Ministry of Health)), and after the issuance of this amendment, the first defendant issued an order to the second defendant that included cutting the engineering allowances granted to them under the previous decision and sufficiency to pay the hazard allowances approved for them under the First Amendment Law to the Law on the Graduation of Health and Medical Professionals, the Minister of Health issued his letter No. (18818) on 4/4/2021 addressed to all health departments in the governorates, which included withholding the allocations granted to them, except for the allocations granted under the aforementioned amendment law, and since this erroneous unconstitutional implementation of federal laws related to the subject of engineering allocations led to the loss of their rights and based on the court's jurisdiction to adjudicate cases arising from the implementation of federal laws under the provisions of Article (93/3rd) of the Constitution of the Republic of Iraq of 2005 and Article (4) of the Federal Court Law Supreme Court No. (30) of 2005 and Article (25) of its Rules of Procedure No. (1) of 2022 Therefore, the plaintiffs took the initiative to challenge this implementation for the following reasons: 1- Violating Article (14) of the Constitution, which affirms the principle of equality among Iraqis, by not granting them engineering allocations like engineers working in other state departments. 2- Violating the provisions of Article (16) of the Law of Salaries of State and Public

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Sector Employees No. (22) of 2008, which stipulates that the total allocations should not exceed (200%) of the salary. 3. The letter of the General Secretariat of the Council of Ministers / Legal Department addressed to the Engineers Syndicate No. (Qaf/5/30682 on 24/10/2021) confirmed that the engineering allocations were granted according to the Council of Ministers Resolution No. (233) of 2008 and requested the Ministry of Health to indicate the legal basis for cutting those allocations. 4. The General Secretariat of the Council of Ministers / Legal Department confirmed by its letter No. (Qaf/2/1/15/2500 on 3/2/2009) addressed to the Ministry of Health and Environment that there is no objection to combining the allocations, provided that this does not exceed (200%) of the nominal salary based on the provisions of Article (16) of the Law on the Salaries of State Employees, in addition to the issuance of the State Council Resolution No. (91 on 3/9/2015) that it is permissible to include engineers who receive engineering allocations with occupational hazard allowances, since this incorrect implementation has directly harmed the plaintiffs, they requested this court to cancel the implementation of federal laws and the action taken by the defendants to withhold the engineering allowances granted to them under Cabinet Resolution No. (233) of 2008 on the pretext of including them in the occupational hazard allowances granted to them under the provisions of the third amendment to the Law on the Graduation of Medical and Health Professionals No. (6) of 2000, and instructing them to pay these allowances retroactively and from the date of withheld, and to charge them fees and expenses. and advocacy fees)). The lawsuit was registered with this court with the number (236/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 the defendants are informed of its petition and documents in

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accordance with item (2nd) of the same article, and the agent of the first defendant replied with the answering draft dated 24/11/2022, the conclusion of which is that the court does not have jurisdiction over what the plaintiffs requested and that the litigation against his client is not achieved, Cabinet Resolution No. (308) of 2021 was also issued, which included increasing the allocations granted to the staff of the Ministry of Health based on the provisions of Article (15) of the Law on the Salaries of State Employees, which specified the powers of the Council of Ministers to grant allocations, provided that they do not exceed (50%) Therefore, Cabinet Resolution No. (233) of 2008 is not applicable against plaintiffs, in addition to that Law No. (1) of 2020 (Third Amendment to the Law on the Graduation of Medical and Health Professionals No. 6 of 2000) The segment of life medicine engineers and medical device technology engineers was considered from the segment of those with supporting health professions under Article (1/5th/Zin, Jim) thereof, and Article (4/2nd) stated that the plaintiffs enjoy the risk allowances enjoyed by their peers with health professionals by the Ministry of Health, and it is not permissible to combine two types of allocations under (one name) so as not to repeat the expenditure, Therefore, the court was asked to dismiss the lawsuit and charge the plaintiffs the expenses, fees, and attorney's fees. The agent of the second defendant replied with the reply list submitted on 13/11/2022, its conclusion is that the circular of the Ministry of Health mentioned in the lawsuit petition was issued based on the law amending the Law on the Graduation of Health and Medical Professionals, according to which the supporting medical and health addresses were amended, so the allocations were granted at the amount of (50%) of the nominal salary and under the authority of the Council of Ministers in accordance with Article (15) of the Law on the Salaries of State Employees, and in view

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of that, it is impossible to combine the allocations due to different job titles and the inadmissibility of exceeding the legal texts above, in addition, the plaintiffs were included in the central appointments following Law No. (6) of 2000, Article (4) of which stipulates (First: The provisions of the Law on the Graduation of Medical and Health Professionals concerning Medical and Health Gradation shall apply to those with supporting health professions... Second: Those covered by paragraph 5th of Article (1) of this law shall enjoy the same risk allowances granted by the Ministry of Health by their peers with health professions, in addition to the fact that the work practiced by the plaintiffs, although engineering, is related to medical technologies, They, therefore, requested that the lawsuit be dismissed and that the plaintiffs be charged the fees and fees. After completing the procedures required by the court's rules of procedure, a date was set for the consideration of the case without pleading based on Article (21/3rd) thereof, in which the court was formed and the case was examined, the court checked what was stated in the plaintiffs' lawsuit, its grounds and requests, and what was stated in the response lists submitted by the defendants linked within the case papers, and after the court completed its audits, the end of the minutes has been made clear and the court issued the following judgment decision:

The decision:

After scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiffs' lawsuit is focused on demanding ((the judgment to cancel the application of federal laws and the action taken by the defendants by the Prime Minister and the Federal Minister of Health, in addition to their functions, which includes withholding the engineering

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allocations granted to them under the Cabinet Resolution No. (233) of 2008 on the pretext of including them in the occupational hazard allowances granted to them under Law No. (1) of 2020 (the third amendment to the Law on the Graduation of Medical and Health Professionals No. (6) for the year 2000 as amended) and instructing the defendants to pay these allowances to them retroactively from the date of withholding)) following the provisions of Article (93/3rd) of the Constitution, and upon careful consideration of the plaintiffs' lawsuit in all its paragraphs, as well as the applications submitted by them, it becomes clear to this court that the first defendant (Prime Minister / in addition to his position) as a federal authority did not take any action against the plaintiffs regarding the withholding of the allocations referred to in the lawsuit petition. Issued an order to the second defendant, the Federal Minister of Health /being in this capacity, it includes ceasing the engineering allocations granted to the plaintiffs under the Council of Ministers Resolution No. (233) of 2008 and only disbursing the hazard allowances prescribed to them under the first amendment to the Law on the Graduation of Medical and Health Professionals, and the plaintiffs did not provide anything confirming the issuance of such an order by the first defendant in addition to his job, but what was stated in paragraphs (3 and 4) of the lawsuit petition contradicts what the plaintiffs claimed in this regard, as paragraph (3) included that the General Secretariat of the Council of Ministers confirmed in its letter No. (Qaf/5/30682) On 24/10/2021) the engineering allocations were granted under Cabinet Resolution No. (233) of 2008 and requested the Ministry of Health to indicate the legal basis for cutting these allocations, according to paragraph (4) of the petition, the General Secretariat of the Council of Ministers also confirmed in its letter No. (Qaf/2/1/15/2500 on 3/2/2009) addressed to

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the Ministry of Health and Environment that there is no objection to combining the allocations, provided that this does not exceed (200%) of the nominal salary based on the provisions of Article (16) of the Law on the Salaries of State Employees, and it is clear from all this that the decision and procedure by which the allowances were cut off from the plaintiffs and their peers were issued by the Federal Minister of Health. Without an order from the first defendant (the Prime Minister / being in this capacity), the Prime Minister or the General Secretariat of the Council of Ministers did not issue any decision in this regard. The jurisdiction of this court under Article (93/3rd) of the Constitution of the Republic of Iraq for the year 2005 is limited to adjudicating cases arising from the application of federal laws, decisions, regulations, instructions, and procedures issued by the (federal authority) and the judgment of this court has settled that what is meant by (federal authority) based on the operative part of Article (93/3rd) is one of the three federal authorities without ministries and their subordinate bodies in addition to independent bodies. Federal Ministers or the General Secretariat of the Council of Ministers Any decision or procedure regarding withholding allocations from the plaintiffs and that the decision in question was issued by the Federal Ministry of Health And the mere mention of the name of the Prime Minister/ being in this capacity as the defendant in the lawsuit does not in itself give jurisdiction to this court to hear the plaintiffs' lawsuit, Therefore, in this case, this court is not competent to hear the case. For all of the foregoing, and due to lack of jurisdiction, the court decided to dismiss the plaintiffs' lawsuit in form without going into its content and charging them the expenses, fees, and attorney's fees of the defendants' agents/ being in their capacity, an amount of one hundred thousand dinars, to be distributed in accordance with the law. The decision has been issued

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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 (4, 5/2nd) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been edited in the session dated 24/Jamada Al-Akhir/1444 Hijri which coincided with 19/December/2022 AD.

Signature of
The president
Jasem Mohammad Abboud

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