

Republic of Iraq
Federal Supreme Court
Ref 313/ federal/2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 26/3/2024 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: Adnan Karem Salman/his agent the barrister Ali Kamil Rasoul.

The Defendants:

1. Prime Minister / being in this capacity – His agent the legal adviser Abbas Majeed Shabib.
2. Secretary General of the Council of Ministers / being in this capacity His agent the legal adviser Haider Ali Jaber.

The Claim:

The plaintiff, through the mediation of his agent, claimed that the General Secretariat of the Council of Ministers / Legal Department issued its confidential letter No. (Qaf/2/5/19/42/4626) on 27/11/2022, which includes that assigning him the position of acting advisor to the Ministry of Labor and Social Affairs is not authentic, and since this decision was unfair and infringed on his rights, so he took the initiative to challenge it before this court based on the provisions of Article (93/3rd) of the Constitution, and for the following reasons:

First: Under legal circumstances, he was appointed as an authentic Inspector General of the Ministry of Migration and Displaced under Office order No. (28) issued in the letter of the Prime Minister's Office No. (Mim.Ra.Nun/Dal 2/78/3980) on 16/3/2014, and then transferred as Inspector General to the Ministry of Industry and Minerals under

Zainab

Republic of Iraq
Federal Supreme Court
Ref 313/ federal/2023



Kurdish text

Office order (11/S) issued under the Prime Minister's Office letter No. (Mim.Ra.Waw/Sin/1326) on 19/6/2016, he was then reappointed as authenticity Inspector General in the Ministry of Labour and Social Affairs under Office order (22) issued under the Prime Minister's letter, No. (Mim.Ra.Waw/Sin/Dal 6/8/1619) on 14/5/2019, and after the issuance of Law (24) of 2019, the law repealing the dissolved Coalition Provisional Authority Order No. (57) of 2004, and the issuance of the Council of Ministers Resolution No. (389) of 2019 amended by the Council of Ministers Resolution No. (464) of 2019, and because it enjoys a functional legal status based on Office Order No. (72) of 2008, and to include it in the provisions of paragraph (3) from the aforementioned Cabinet decision, his services were transferred with the job grade (Senior / Alif) and the financial allocation to occupy the position of Advisor in the Ministry of Labor and Social Affairs under Office order (108) issued under the Prime Minister's Office letter No. (Mim.Ra.Waw/Dal 6/23/3376) on 24/2/2020, and the Ministry of Finance letter No. (178791) on 29/12/2019. Second: The Federal Supreme Court has previously issued several rulings, including (164/Federal/2023), which included that transferring the general inspectors appointed mainly to other positions in the ministries to which they are attributed and authorizing the minister to reappoint them to the position of deputy minister, adviser or director general does not mean that they are covered by the provisions of Article (61/5th/Beh) of the Constitution, and it is not permissible to convert an employee on the permanent staff and appointed authentically to an acting employee contrary to the provisions of the law and without support from him, and that the inspector general is not included by retirement, he shall retain his functional grade in the entity to which he is assigned, and since the decisions of the court are final and binding

Zainab

Republic of Iraq
Federal Supreme Court
Ref 313/ federal/2023



Kurdish text

on all authorities, and that the judgments issued by the Iraqi courts that have acquired the degree of definitive shall be an argument for what they have adjudicated, the authority of the court's rulings is not limited to the parties to the lawsuit only, so the plaintiff asked this court to oblige the defendants to adopt the Office order (108) issued by the Prime Minister's letter No. (Mim.Ra.Waw/Dal 6/23/3376) on 24/2/2020, which includes occupying the rank of advisor at the Ministry of Labor and Social Affairs authentically, and charging them fees, expenses and attorneyship fees. after registering the case with this court No. (313/Federal/2023) and collecting the legal fee for it, and informing the defendants of its petition and documents in accordance with Article (21/1st and 2nd) of the Rules of Procedure of the Federal Court of the Supreme Court No. (1) of 2022, the defendants' agents replied in the reply list dated 2/1/2024, summing it up: that the plaintiff's request is outside the jurisdiction of the court specified under Article (93) of the Constitution, and Article (4) of the Federal Supreme Court Law No. (30) of 2005, as amended, which focused on obliging the defendants to implement Office order (108) entrusting him with the position of consultant at the highest grade, and that this order is implemented by the Ministry of Labor and Social Affairs and the General Secretariat, and the Office order his appointment did not include (incumbently) in his position, but expressly referred to his assignment as a consultant, and therefore there is no basis for filing a lawsuit against the defendants, because the litigation is not directed from this aspect in accordance with the provisions of Article (80/1) of the Civil Procedure Law No. (83) of 1969, as amended, Paragraph (3) of Resolution (398 of 2019), as amended by Resolution (464 of 2019), included that the competent minister in the entity in which the inspector general was working should propose the position of

Zainab

Republic of Iraq
Federal Supreme Court
Ref 313/ federal/2023



Kurdish text

undersecretary, adviser or general manager, and that the text is clear in the proposal, which does not mean appointment, and the difference is clear between the two things, and that the text included that the minister makes the proposal and that the competent authority to issue the necessary decision against him is the Council of Ministers, if the Minister nominates the Inspector General for this position, a decision shall be issued by the Council of Ministers appointing him, and if he is nominated for a job among the positions listed in the provisions of Article (61/5th) of the Constitution, the Council of Ministers shall recommend the appointment in accordance with the provisions of Article (80/5th) of the Constitution to say that the Prime Minister has the authority to transfer the Inspector General to the post of Director General means that there is an authorization from the Council of Ministers, in this regard, the Council of Ministers Resolution (341) of 2021 included authorizing him to appoint general directors, and the Federal Supreme Court confirmed in its decision No. (192/Federal/2023) that as long as the advisers is considered a consultant with the rank of (Higher / Alif), this requires compliance with the provisions of the Constitution and what is stated in the provisions of Article (61/5th) thereof, and that the judgment went to the mechanism of appointing advisers in the legislative authority that is from the duty of adhere to this when appointing advisers within the executive authority, and that the plaintiff was assigned to the position of adviser and was not reappointed to the position of adviser, as the assignment order was issued by the Prime Minister and not issued by the Council of Ministers, and that the General Secretariat of the Council of Ministers has implemented Office order (108) of 2020 and its visa, so the defendants' agents requested to reject the appeal, the plaintiff shall be charged fees, expenses and advocacy fees. After

Zainab

Republic of Iraq
Federal Supreme Court
Ref 313/ federal/2023



Kurdish text

completing the procedures required by the Court's Rules of Procedure, a date shall be fixed for the pleadings in accordance with Article (21/3rd) thereof, and the parties shall be informed thereof, in it, the court was formed, and the plaintiff and his agent attended, and the defendants' agents attended, and began to conduct the public presence pleading, after hearing the statements of each party and completing its scrutinies, the decision has been made clear and issued the following decision:

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff filed a lawsuit before this court against the defendants, the Prime Minister and the Secretary-General of the Council of Ministers, in addition to their jobs, to demand that they be obliged by the adoption of Order Order No. (108) issued in the Prime Minister's letter No. (Mim.Ra.Waw/Dal 6/23/3376) on 24/2/2020, which includes occupying him the rank of advisor authenticity at the Ministry of Labor and Social Affairs, and charging them fees, expenses and attorneyship fees, The Federal Supreme Court finds that the plaintiff's claim must be rejected in form in accordance with the form in which the case is filed, since the powers and competences of this court are exclusively stipulated in 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 law No. (25) of 2021 and some other special laws, and none of those competencies and powers gives the court jurisdiction to decide on the plaintiff's request contained in the lawsuit petition according to the formula established therein, especially since obliging the defendants / being in their capacity a judgment of adopting and implementing Office order No. (108) issued in the Prime Minister's

Zainab

Republic of Iraq
Federal Supreme Court
Ref 313/ federal/2023



Kurdish text

letter No. (Mim.Ra.Waw/Dal 6/23/3376) on 24/2/2020, the judgment requires the invalidity of paragraph (1) of the letter of the General Secretariat of the Council of Ministers / Legal Department No. (Sin/2/5/19/42/4626) dated 27/11/2022 addressed to the Ministry of Labor and Social Affairs / Minister's Office, which includes ((We note that the occupancy of Mr. (Adnan Karim Salman) with the duties of a consultant is by proxy for not fulfilling the mechanism of occupying the position originally)), which the plaintiff did not claim in the petition, and since the lawsuit is restricted by its petition and the plaintiff is a prisoner of his request, the court may not override or detract from the plaintiff's requests, or to increase it without request in accordance with the provisions of the law, therefore, and in view of the above, the Federal Supreme Court decided to rule as follows:

First: Reject the plaintiff's lawsuit Adnan Karim Salman in form according to the form in which the lawsuit was filed.

Second: Charging the plaintiff with fees, expenses and attorneyship fees for the first defendant's agent, the Prime Minister, being in this capacity the legal adviser Abbas Majeed Shabib and the agent of second defendant Secretary General of the Council of Ministers / being in this capacity the legal adviser Haider Ali Jaber an amount of one hundred thousand dinars distributed in accordance with the law.

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 of 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 the decision has been made clear on 15/Ramadan/ 1445 A.H. corresponding to 26/3/2024 AD.

Zainab

Republic of Iraq
Federal Supreme Court
Ref 313/ federal/2023



Kurdish text

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

Zainab

Federal Supreme Court - Iraq - Baghdad
Tel – 009647706770419
E-mail: federalcourt_iraq@yahoo.com
Mailbox- 55566