

Republic of Iraq
Federal Supreme Court
Ref 315/ 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: Muhammed Jawad Hameed-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 claimed through his agent that the General Secretariat of the Council of Ministers/Legal Department issued the secret letter issue (Qaf/2/5/22/42/78) on 14/1/2021, in which a typographical error was mentioned in the name of the plaintiff (Muhammad Jawad Hashem) and the correct one (Muhammad Jawad Hamid), which is attached to the letter of the Ministry of Migration and Displaced No. (46 S) on 29/12/2020, which includes his assignment to the position of advisor to the Ministry of Migration and Displacement by proxy and not authenticity, and since this decision was unfair and infringed on the rights of the plaintiff, 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:

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1. Under proper legal circumstances, he appointed an authentic inspector general of the Ministry of Migration and Displacement by the Office order (22S) issued in the letter of the Prime Minister's Office No. (Mim.Ra.Waw/Sin/Dal 6/8/1619) on 14/5/2019, and Law No. (24) of 2019 was issued, the law repealing the dissolved Coalition Provisional Authority Order No. (57) of 2004, the Council of Ministers Resolution No. (389) of 2019, as amended by the Council of Ministers Resolution No. (464) of 2019, was also issued, 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 above Cabinet Decision, which was consistent with the provisions of Article (41) of the Civil Service Law No. (24) of 1960, as amended, he was assigned to occupy the position of an authenticity advisor in the same ministry under the Office order No. (143) issued by a letter the Prime Minister in the number (Mim.Ra.Waw/Dal 6/21/4267) on 10/3/2020, and the letter of the Ministry of Finance in the number (3174) on 30/4/2020.

2- The court has previously issued its decisions (218/Federal/2022), (18/Federal/2023), (120/Federal/2023) and (164/Federal/2023), which included that those who have been transferred deserve the job titles to which they are transferred, provided that they are not higher than their previous addresses, it is not permissible to convert an employee on the permanent staff and appointed in his own capacity to an acting employee and contrary to the provisions of the law and without support from it, and since the decisions issued by the court are final and binding on all authorities and persons, the judgments issued by the Iraqi courts that have acquired the degree of definitive shall be an argument in what they have decided, it is not permissible to accept any evidence that contradicts the authority of the final judgments in

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accordance with the provisions of Articles (105 and 106) of the Evidence Law No. (107) of 1979, as amended, and since the validity of judgments issued by the Federal Supreme Court is not limited to the parties to the lawsuit only, and applies to everyone, whether individuals or state authorities, so the plaintiff requested this court to order the defendants to adopt the Office order (143) issued by the Prime Minister's letter No. (Mim.Ra.Waw/Dal 6/21/4267) on 10/3/2020, the plaintiff holds the rank of advisor in the Ministry of Migration and Displaced in authenticity and charges the defendants with fees, expenses and attorneyship fees. After registering the case with this court No. (315/Federal/2023), collecting the legal fee thereon, 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 Supreme Court No. (1) of 2022, the defendants' agents replied by the reply dated 2/1/2024, the conclusion of which is: that the plaintiff's request is outside the jurisdiction of the court specified in Article 93 of the Constitution and Article 4 of the Federal Supreme Court Law No. 30 of 2005, as amended, which focused on obliging their clients to implement the Office order that includes assigning the plaintiff the position of adviser at the highest degree, and that this order is implemented by the Ministry of Migration and Displaced and the General Secretariat and did not include his appointment (authenticity) in his position, but explicitly referred to his assignment as an adviser and therefore there is no basis for filing a lawsuit against the defendants because the litigation is not directed from this aspect based on the provisions of Article (80/1) of the Civil Procedure Law No. (83) for the year 1969 as amended, paragraph (3) of Resolution (389 of 2019) as amended by Resolution 464 of 2019) it included that the competent minister in the entity in which the inspector general was

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working, to propose the position of undersecretary or adviser or a general manager, and 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, and that if the minister nominates the inspector general for this job, a decision is issued by the Council of Ministers to appoint him and if he is nominated for a job within the positions mentioned 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, saying that the Prime Minister has the authority to transfer the Inspector General to the position of Director General means that there is an authorization from the Council of Ministers, and 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 adviser is considered an advisor at the (higher / Alif) grade, this requires adherence to the provisions of the Constitution and the provisions of Article (61/5th) thereof, and that the ruling went to the mechanism for 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 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 by the Council of Ministers, and the General Secretariat of the Council of Ministers implemented and marked Office order (108) of 2020, therefore, the defendants' agents requested to reject the lawsuit and charging the plaintiff the fees, expenses and attorneyship fees. After

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completing the procedures required by the rules of procedure of the court, a date was set for the pleading in accordance with Article (21/3rd) thereof, and the parties were informed of it, and in which the court was formed, so the plaintiff and his agent attended, and the defendants' agents attended, and the public presence pleadings began, the plaintiff and his agent repeated what was stated in the lawsuit petition and requested a judgment according to what was stated therein, the defendants' agents answered and requested to reject of the lawsuit for the reasons contained in their list linked to the lawsuit papers, and each party repeated his previous statements and requests, and where there is nothing left to be said, the end of the argument has been made clear and the court issued the following decision:

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff Muhammad Jawad Hamid filed the case before this court, against the defendants the Prime Minister and the Secretary General of the Council of Ministers / being in their capacity to demand that they be obliged by virtue of the implementation of Office order (143) issued in the Prime Minister's letter No. (Mim.Ra.Waw/Dal 6/21/4267) on 10/3/2020, which included occupying the plaintiff the rank of adviser in the Ministry of Migration and Displaced in authenticity and charging the defendants 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 lawsuit is instituted, though 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 by Law No. 25, of 2021, and some

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other special laws, and not among those competencies and powers that give the court jurisdiction to decide on the plaintiff's request contained in the lawsuit petition according to the formula proven therein, especially since obliging the defendants, in addition to their jobs, to implement the Office order (143) issued in the Prime Minister's letter No. (Mim.Ra.Waw. 6/21/4267) on 10/3/2020, requires a ruling that what was stated in the letter of the General Secretariat of the Council of Ministers / Legal Department No. (Sin/2/5/22/42/78) is incorrect, on 14/1/2021, a typographical error in the name of the plaintiff addressed to the Ministry of Migration and Displaced / Minister's Office which includes (the plaintiff's occupation of the position of adviser shall be by proxy because his appointment does not fulfill the stipulated mechanism in the Constitution), which was not claimed by the plaintiff in the petition, and since the lawsuit is restricted by its petition and the plaintiff is a prisoner of his request, and the court may not override, detract from or exceed the plaintiff's requests without request in accordance with the provisions of the law, therefore, in view of the foregoing, the Federal Supreme Court has decided as follows:

First: Reject the plaintiff's lawsuit Muhammad Jawad Hamid in form according to the form in which the lawsuit was filed.

Second: The plaintiff shall charge the fees, expenses and attorneyship fees of the first defendant's agent, the Prime Minister, in addition to his job, the legal adviser Abbas Majeed Shabib, and the second defendant's agent, the Secretary General of the Council of Ministers, in addition to his job, the legal advisor Haider Ali Jaber, an amount of one hundred thousand dinars distributed in accordance with the law.

The decision has been issued unanimously according to the provisions of Articles 93 and 94 of the Constitution of the Republic of Iraq of 2005.

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Articles (4 and 5/Second) of the Federal Supreme Court Law No. 30 of 2005, as amended by Law No. 25 for the year 2021, and has been made clear on on 15/Ramadan/1445 A.H. corresponding to 26/3/2024 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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