

In the name of God most gracious most Merciful

Republic of Iraq  
Federal supreme court  
Ref. 4/federal/2020



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 26.5.2021 headed by Judge Jasem Mohammad Abood and the membership of the judges Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Diyar Muhammad Ali, and Munthir Ibrahim Hussein who are authorized to judge in the name of the people, they made the following decision:

The Plaintiff: Mina' Jawad Ibrahim/ his attorney Ayed Khalif Mansour.

The First Defendant: Minister of Higher Education and Scientific Research  
/ being in his capacity his deputy assistant professor  
Dr. Amir Taleb Hadi

The Second Defendant: Minister of Finance/ being in his capacity his  
deputy assistant legal adviser, Janan Abdul Jalil  
Abdul Karim.

The Claim:

The plaintiff's agent claimed that his client was an employee (translator) in the second defendant's department/ being in his capacity, and on 31/5/2012 she applied to the second defendant (Minister of Finance/ being in his capacity) included (please agree to complete my studies at my own expense at an Indian university knowing that I am a translator in the Ministry of Finance / Accounting Department and was born in 1958 and I received admission from the Ottoman University in

Hyderabad, where I ask for study leave and thank you and appreciation) the Minister of Finance has obtained the approval of the request by a margin dated 31/5/2013, referred to in the letter of the Administrative Department/Human Resources No. (501/46692 on 18/6/2012) and the administrative order (11677 was issued on 2/7/2012) and addressed to the First Defendant's Department (Ministry of Higher Education and Scientific Research, Department of Missions and Cultural Relations). After completing her studies and obtaining a master's degree in English and equalizing the certificate in the Department of Missions and Cultural Relations of the First Defendant (Minister of Higher Education and Scientific Research/ being in his capacity) under decision No. (15313 No. /9751 on 16/3/2015) the Second Defendant's Department/ being in his capacity refused taken the consideration of master's degree and grant it legally specified allocations on the grounds that its study was not carried out under the study leave specified by the teaching instructions (165) of 2011 and for violating the teachings of the 2005 Constitution of the Republic of Iraq. The prosecutor requested the defendants' case to argue and rule on the sub-legislative deficiencies and to oblige the defendants/ being in their capacity to issue instructions regulating postgraduate studies on private maintenance consistent with the constitutional text of article (34) and to charge those fees and expenses for the following reasons: 1- Chapter One of Section Two of the Constitution is entitled "Rights" and article (34/1<sup>st</sup>) of it (Education is a fundamental factor for the progress of society and is a right guaranteed by the state. Primary education is mandatory and the state guarantees that it shall combat illiteracy. Third: The State shall encourage scientific research for peaceful purposes that serve humanity and shall support excellence, creativity, invention, and different aspects of ingenuity.) 2- According to the reasons for Law No. (14) Of 2009, the First Amendment Law of the Civil Service Law No. (4) of 1960 (To raise the scientific level of employees in the state departments and in order to facilitate their obtaining a higher certificate from inside or outside Iraq

and for the purpose of authorizing the competent minister or the head of the non-associated ministry to grant school leave inside and outside Iraq in accordance with a general policy indicating the need of the state in general and ministries and entities not associated with the ministry in particular for practical and professional competences, this law has been enacted). The mentioned law came under general provisions and referred article (1/item Seven) of it to the defendants to issue instructions where it guarantees (determined by instructions by the Minister of Higher Education and Scientific Research in coordination with the Minister of Finance the conditions for granting school leave and the form of the undertaking to which the employee is committed to studying to obtain a certificate inside and outside Iraq). 3- The instructions for the study leave No. (165) of 2011 issued by the Minister of Higher Education and Scientific Research were contrary to the text of item (7<sup>th</sup>), Article (1) of Law No. (14) of 2009 referred to in paragraph (2) above which required the participation of the defendants in issuing the instructions of the study leave and the instructions mentioned came free of the provisions governing the case of study of the employee at his own expense who obtains approval to complete his higher studies and without instructions of those provisions contrary to the provisions of article (34) paragraph (1) of the Constitution. 4- The instructions for the study leave No. (165) of 2011 met the legal formality by publishing it in the Official Gazette and the challenge to its unconstitutionality before the FSC shall be pursuant to the provisions of Article (4/2<sup>nd</sup>) of the FSC's Law No. (30) Of 2005 and Article (6) of the Court's Bylaw No. (1) of 2005 and that his client filed the numbered case (3102/mim/2019) before the Employee judiciary court appeals the decision of the second defendant/ being in his capacity to refrain from taken consideration the master's degree and not to pay its allowances and the abstention based on instructions No. (165) of 2011 and a decision was issued rejected on 9/12/2019, causing that the higher certificate without a study leave, and because his client suffered direct harm and has an interest in bringing

this case in accordance with the advanced offer. 5- The instructions challenged above in Article (9/2<sup>nd</sup>) authorized the extension of the school leave to a regular leave with or without salary for a period of not more than two witnesses and only once because the employee did not receive the required certificate within the period granted to him - and for the limitations of the above instructions for the organization of the study on private maintenance despite the legal authority granted to the defendants/ being in their capacity under Article (7) of Law No. (14) of 2009, which were contrary to the provisions of Article (34) of the Constitution, so the prosecutor requested the defendants' case to plead after setting a date and ruling on sub-legislative deficiencies and obliging the defendants/ being in their capacity to issue instructions regulating higher study on maintenance in accordance with the text of article (34) of the Constitution and charging them fees, expenses and fees for lawyers. Based on the provisions of Article (1/3<sup>rd</sup>) of the Bylaw of the FSC No. (1) Of 2005, the case was registered with this court in No. (4/federal/2020) after the legal fee has been met and based on the provisions of Article (2/1<sup>st</sup>) of the bylaw above. The defendants were informed of the petition and its documents, and the first defendant (Minister of Higher Education and Scientific Research/ being in his capacity) answered by his deputy Assistant Professor Dr. Amir Taleb Hadi that Law No. 20 of 2020 regulated how the mosaic obtained the certificate at his own expense that the law No. (20) of 2020 regulated how an employee obtained the certificate at his own expense and no previous law regulated this and article (13/2<sup>nd</sup>) of the mentioned law stipulated that the initial and higher certificates of the employees who received them are equivalent without leave or without the approval of their departments and are taken consideration for the purposes of increment salary, promotion and retirement for the holders before the entry into force of this law and request the rejection of the case because of the lack of interest in its establishment, the second defendant (the Minister of Finance/ being in his capacity) replied through his agent,

Assistant Legal Counsel Janan Abdel Jalil, in its regulations dated 15/3/2020 that the subject matter of the case is governed by the text of Law No. (14) Of 2009 and the instructions issued under the No. (165) of 2011, the plaintiff was referred to retirement in accordance with the provisions of Law No. (26) Of 2019 (First Amendment Act of the Unified Retirement Act No. (9) Of 2014) and requested that the case be rejected. After completing the due process by virtue of article (2/1<sup>st</sup>) of the FSC's Law No. (1) Of 2005 and on the basis of the provisions of paragraph (2<sup>nd</sup>) of the mentioned article, the date of the case was set and the parties to the case were informed and the pleading was initiated immanence and public. The prosecutor repeated the petition and requested the verdict according to it, adding that his client was working in the Ministry of Finance accounting department with the degree of an older translator and while enjoying vacation without salary for two years completed her studies outside Iraq and obtained a master's degree in her competence and her certificate was not taken consideration and his client was referred to retirement before Law No. (20) Of 2020 came into force, and the first and second defendants' attorneys repeated their requests to dismiss the plaintiff's claim because she had been referred to retirement before Law No. (20) Of 2020 came into force for lack of interest, and the case was scrutinized and deliberated by this court and the following ruling was issued publicly.

### The Decision:

After scrutiny and deliberation found that the plaintiff's agent and the defendants' agents / being in their capacity confirmed during the pleadings and in the mutual drafts between them and the plaintiff that the plaintiff had been referred to retirement in accordance with the provisions of Law No. (26) Of 2019 (the First Amendment to the Unified Retirement Act No. (9) of 2014) before Law (20) of 2020 came into force, thus, the plaintiff's case is rejected because the condition of

interest for her retirement must not be fulfilled during the hearing of the case, while the requirement of interest must be provided during the proceedings and until a decision has been issued, on the one hand, and on the other hand, the plaintiff's agent requested in the petition and during the hearings the defendant to order the defendant to issue instructions regulating the higher study on special reconciliation in accordance with the provisions of Article (34) of the Constitution of the Republic of Iraq for 2005. In the consideration by this court of the jurisdictions of the FSC provided for by Article (93) of the Constitution of 2005 and Article (4) of the FSC's Law No. (30) Of 2005 (amended). The FSC finds that the legislative or executive branch is obliged to issue instructions to avoid legislative deficiencies in a particular law that is not within the terms of reference provided for in the above-mentioned articles. Therefore, the plaintiff's case is rejected by the jurisdiction, so for all of the above, the court decided to reject the case of the plaintiff Mina Jawad Ibrahim in No. (4/federal/2020) form and charge them with fees and judicial expenses and the fees of the lawyers of the defendants' agents/ being in their capacity assistant professor Dr. Amir Taleb Hadi and deputy assistant legal adviser, Janan Abdul Jalil Abdul Karim amount of one hundred thousand dinars, distributed according to the law, the decision was issued by agreement decisively based on the provisions of Articles (93 & 94) of the Constitution of the Republic of Iraq for 2005 and Articles (4) and (5) of the FSC's Law No. (30) Of 2005 (amended) and had made clear public on 26/May/2021 coinciding with 13/Shawwal/1442.