



The Federal Supreme Court (F S C) has been convened on 15.5.2018 headed by the Judge Madhat Al-Mahmood and membership of Judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Aboud Salih Al-Temimi, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen who authorized in the name of the people to judge, and they made the following decision:

The Plaintiff: (beh.mim.sad) the agent of the Ministry of electricity (formerly) – Her agent the barrister (mim.mim.sad).

The Defendants: 1. The Prime Minister/ being in this capacity- his agent the jurist assistant consultant (ha.sad).

2. Head of National pension committee/ being in this capacity – his agent the jurist official (kha.alif.nun).

The Claim

The plaintiff claimed that she was previously assigned as a deputy of the Ministry of electricity on 3.4.2004, and because of non-conformity with the former Minister. A divan order had been issued by the Prime Minister by removing her from the post, and refer her to retirement on 19.10.2008. The Minister of electricity executed the aforementioned order on 26.10.2006, and she had been included by the order No. (9) For 2005. She was taking a pension salary (6579000) dinars. Later on, her salary was reduced to (2100000) dinars, and for this reason, she objected the aforementioned decision on 15.4.2017. The National pension committee decided to reject her request according to the decision of the Cabinet No. (333) for 2015, and she challenged it before the retirees' cases scrutiny Council, and her challenge was rejected too. She challenged the last decision

appealingly before Federal Cassation Court, the Cassation Court decided by its decision No. 5706/civil committee/2017 on 15.11.2017 to reject the objection. The plaintiff claimed that the Cabinet's decision aforementioned violates the Constitution, and her salary is determined before its issuance. The legislative order No. (9) For 2005 regarded as a law, while the decision of the Prime Minister is an administrative regulatory decision, and should not be considered as a legislation. The administrative decision hasn't the power to annul it, and the plaintiff gained rights which shouldn't be compromised. She requested to judge by unconstitutionality of the Cabinet's decision No. (333) for 2015. The first defendant/ being in this capacity was notified with the petition of the case and its documents, and he answered it according to his draft dated on 30.4.2018 which he listed in that the challenged decision is an administrative decision, and challenging it is out of the FSC jurisdiction. This matter is what its judiciary settled on, including the decisions 65/Federal/2017 and 63/Federal/2017 and 38/Federal/2017. He also clarified that his client issued a decision according to his legislative powers stipulated in the article (80/3rd) of the Constitution, and he requested to reject the case. The agent of the second defendant answered by his draft dated on 23.4.2018 which he listed in that retirees' cases scrutiny Council is the office in charge of trying the objections against the decisions issued by the National pension Committee. Its decision is challengeable before Federal Cassation Court. The FSC is incompetent in trying the case. The plaintiff was included by the order No. (9) For 2005, and her pension salary was determined according to it. But the unified pension law No. (9) For 2014 and according to item (1st) of the article (38) had annulled legislative texts listed in the laws and legislations which decided for the retiree pension rights. Among these legislations the legislative order No. (9) For 2005. For issuance of the Cabinet's order No. (333) for 2015, the plaintiff's pension salary was recounted, and it became (2186031) Iraqi dinars according to the rule of the article (21) of unified pension law the aforementioned, and he requested to reject the case. On a set day for argument, the agent of the plaintiff attended and the agent of the first defendant with the agent if the second defendant. The public in presence argument proceeded. The agent of the plaintiff presented an illustrative draft during the session, and he recited its summary. The agent of the defendants answered that they

repeat their previous defends. Whereas nothing left to be said, the end of the argument was made clear and the Court issued the following decision publicly.

The Decision

After scrutiny and deliberation by the FSC, the Court found that the plaintiff claimed she was in the post of undersecretary in the Ministry of electricity, and she was appointed on 3.4.2004, then she was referred to retirement on 19.10.2008 according to the order No. (9) For 2005. She was taking a pension salary amount of (6.579.000) Iraqi dinars, but her salary had been reduced to (2.100.000) Iraqi dinars. Based on this reduction, she requested from the National pension Committee to reconsider her reduced pension salary. The Committee rejected her request. She challenged it before retirees' cases scrutiny Council and also has been rejected. Then she challenged it before Federal Cassation Court which approved retirees' cases scrutiny Council. She initiated this case to judge by unconstitutionality of the Cabinet's decision No. (333) for 2015 pretending that this decision doesn't affect the legislative order No. (9) For 2005 because it doesn't transcend it. The plaintiff repeated in the petition of her case in more than a place that the Cabinet's decision is an administrative decision, and the decision of reducing her salary is an administrative decision. She requests to recount her salary according to the order No. (9) For 2005. The FSC finds that the plaintiff holding on the order No. (9) For 2005 is not possible, because this order had been annulled by item (alif) of the article (38) of unified pension law No. (9) For 2014. Besides, the jurisdictions of the FSC are determined in the article (93) of the Constitution and article (4) of the FSC's law No. (30) For 2005. The decision No. (333) for 2015 is administrative, and the FSC is incompetent in trying the challenges against it. This matter is what the FSC mentioned in previous judgments, and among it (115/Federal/2015) and (65/Federal/2017) dated on 5.3.2016 and 3.8.2017. Therefore, the case of the plaintiff before this Court is lacing to its legal substantiation. The Court decided to reject the case for incompetence and to burden her the expenses and advocacy fees for the agents of the defendants amount if one hundred thousand Iraqi dinars divided between them according to

the law. The decision issued decisively and binding according to the article (94) of the Constitution and article (5/2nd) of FSC law. The decision was made clear on 15.5.2018.