

Republic of Iraq
Federal Supreme Court
Ref. 103 / federal /2021



Kurdish text

The Federal Supreme Court (F S C) has been convened on 10/11/2021 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jabir Abid, Hayder Ali Noori, Khalef Ahmed Rajab, Ayoob Abbas Salah, Abdul-Rahman Suleiman Ali, and Dyar Mohammed Ali who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Adil Abbas Alwan Al-Musawi/ former President of Babylon University – his agent the Barrister Mahdi Abeed Hajwal.

The Defendant: the Minister of Higher Education and Scientific Research/ being in this capacity. His Ph.D. Ahmed Jaafar Shawi.

The Claim

The plaintiff claimed through his agent that the Iraqi Cabinet had already issued its numbered decision (378) on 24/10/2019, which includes recommending to the Council of Representatives to approve his appointment as president of Babylon University, so that the task of the Council of Ministers has stopped at these limits and the decision in this regard remains limited to the Council of Representatives in accordance with its constitutional terms, but the Minister of Higher Education and Scientific Research has amended the extension of his career service and he was referred to retirement without any legal basis and according to the ministerial order of the number (Qaf/4/5/660) on 5 July 2020, in addition to the letter of the General Secretariat of the Council of Ministers, the legal department in the number (Qaf/2/5/8/42/003719) on 22/12/2020 referred to the insistence and the ministry of higher education on extracting the authority of the

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University Council to extend the university service provided for in article (11/1st/Beh) of the University Service Law No. (23) of 2008 amended and assigned to another party through interpretations and misinterpretations of legal texts, which is considered A legal offence punishable by article (329) of the Penal Law No. (111) for 1969. The plaintiff, therefore, appealed the aforementioned ministerial order for the following reasons: 1. The Cabinet's decision to assign special grades is limited to recommendation no more under article (61/5th/Beh) of the Constitution of the Republic of Iraq 2005. 2. The challenged decision was in clear contravention of the principle of separation of powers listed in Article (47) of the Constitution, which established a constitutional principle governing the scope of constitutional powers and jurisdictions entrusted to the federal authorities (legislative, executive, and judicial), and this principle is a prominent feature of the democratic system provided for by the Constitution. Since the Constitution entrusted the competence to appoint holders of special degrees (including the position of University President) to the Council of Representatives, expressing a constitutional legislative philosophy whose essence is the protection of fundamental rights guaranteed by the Constitution in its various texts, first and foremost the right to education and to encourage the permanence of the scientific research process, which is evident in sections (first and third) of the article (34) of the Constitution. . In addition, the ministerial order (challenge subject) did not contain a convincing reason in terms of assessing the periodic performance adopted by the Ministry of Education or any other reason. In addition, he did not take into account the controls of competence and hierarchy, as neither the Prime Minister nor the General Secretariat of the Council of Ministers was approached as a senior executive for the Ministry in matters of special grades, and the

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General Secretariat of the Council of Ministers sent many letters to the Minister and did not commit to the implementation of any order, including the aforementioned letter, which explains that there is no legal basis for the order in question and that the lack of application is a legal violation punishable under article (321) of the Penal Law No. (111) For 1969. Nor has the legislative power, the Council of Representatives, been approached, but there is an order from the Council of Ministers sent to the Council of Representatives to recommend his appointment as President of Babylon University, so his Excellency the Minister exceeded all executive and legislative references, and the Federal Supreme Court issued in the numbered case (97/federal/) 2021) A custodian order to suspend the implementation of the cabinet's numbered decision (378 of 24/10/2019) until the case is resolved, where the decision was issued in favor of the requester for the issuance of the custodian order Dr. (Ali Saleh Hussein al-Jubouri) President The Iraqi University, which has the number 40 in the cabinet's decision earlier, and the plaintiff's sequence carries the number (38), accordingly, and for all aforementioned reasons, the plaintiff requested from the Federal Supreme Court to annul the ministerial order issued by the Ministry of Higher Education and Scientific Research by the number (Qaf/4/5/660) on (5/7/2020) and to restore his post as the President of Baylon University. The case was registered with this court in the number (103/federal/2021) and the legal fee for it was met under the provisions of article (1/3rd) of the Bylaw of the Federal Supreme Court No. (1) of 2005 and the defendant was notified with it According to the article (2/1st) of the same Bylaw above, the defendant replied under the letter in issue (Qaf/Shin/1/3398 of 15 September 2021) the following: 1. The claims and topics of the case fall within the jurisdiction of the Court of Justice of Employees,

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followed by matters arising from the applications of the public service and administrative decisions, confirmed by the consideration of its subjects in kind by the Court of Justice of employees and the issuance of its numbered decision (1824/Mim/2020) dated 14 December 2020 to dismiss the plaintiff's case. 2. The plaintiff was born on 16 January 1956 and holds the title (professor) and has completed the age of (64) sixty-four years with the issuance of Law No. (26) of 2019 (First Amendment Law of the Unified Retirement Law No. 9) of 2014, which is in force as of 31/12/2019, which set the legal age for referring a university service officer to retirement with the title of professor at the age of 63 and for the plaintiff to continue his employment service after that requires the prolongation of his services in accordance with article (11/1-b) of the University Service Law No. (23) for one the year 2008 Amended and where the Council of Ministers has already recommended to the Council of Representatives under paragraph (38) of its numbered decision (378) for the year 2019 to appoint him as president of the University of Babylon which make him covered by the decision of the Cabinet No. (191) for 2013 which adjudged by not prolonging the services of the nominees from the special grades to be confirmed before the Council of Representatives and the necessity of referring them to retirement with a title of a Director-General, and not included in the exception listed in the numbered decision (311) of 2019, under which the Prime Minister was empowered to prolong the service of private degree holders who have reached the legal age of retirement, an exception to the 2013 decision of the Council of Ministers, because the exception listed in Cabinet decision No. (311) of 2019 was talking about the prime minister's authority to prolong the services of the employee, which was subsequently abolished under article (13) of Law No. (26) of 2019, the first amendment of the Unified Retirement Law

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No. (9) for 2014. Otherwise, the plaintiff may not extend his services according to the decision of the Council of Ministers numbered (191) for the year 2013 and must be referred to retirement by law without the need for a reference to be declared for the referral provision and the support of that clause (2nd) of the article (14) of Unified Retirement Law No. (9) of 2014, which was recently amended under article 4 of Law No. (26) of 2019 and is obliged to refer the employee appointed by order of the Council of Ministers or by republican decree by decision of the competent minister upon completion of the legal age or health reasons, and the decision to retire automatically does not require pre-empting it with a formality and there is no need to causing it. 3. In the decision to extend the plaintiff's services, the formality provided for in article (11/1st_Beh) of the University Service Law No. (23) of 2008 amended, found that the extension of his services was not submitted to the relevant section or college board and was not accompanied by a recommendation for an extension. Furthermore, the clause extending his services was not submitted to the University Council for discussion or voting, but the paragraph directly related to him was not submitted to the minutes of the session presented to the Ministry to Extension without submitting it to the University Council, which was confirmed by the University of Babylon letter No. (37/Sin) dated 27 January 2020 and statements are taken to the members of the University Council and the Secretary of the University Council support this, so the decision to extend is invalid and has no legal effect, and the statement that the decision to cancel the extension of services from the University Council should be taken in accordance with a rule equivalent to forms applies if it passes starting with the same mechanism, while it was not discussed in the University Council and did not vote on it. 4. In addition, the diwani order numbered (68) was issued by the General Secretariat of

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the Council of Ministers (Qaf/2/5/440) dated 14 February 2021, assigning (Ph.D. Professor Qahtan Hadi Hussein al-Jubouri) the functions of running and managing the position of President of Babylon University as his replacement and in light of the reasons given for the request for a dismissal of the case because there was no support for it from the law. . After completing the proceedings in accordance with the provisions of the aforementioned Bylaw, a date was set for the case and the parties were notified based on an article (2/2nd) of the aforementioned Bylaw and on the appointed day the court was formed, and the plaintiff and his attorney Mehdi Obeid Hajoul attended and the defendant/ being in this capacity represented by his agent Dr. Ahmed Jafar Shawi. The public in presence argument proceeded, the plaintiff and his agent repeated what was stated in the petition and requested to reject the case under which the plaintiff added a list of answers to the court in response to what was said in the petition. In the defendant's agent's list/ being in this capacity. The agent of the defendant answered and requested to reject the case for the reasons listed in his answering draft dated 15/9/2021, the agent of the plaintiff answered by showing a request to issue a custodian order to stop executing the decision issued by the Ministry of Higher Education and Scientific Research by the number (660) on 5/7/2020. The Court decided to reject the request, trying of such case is out of its jurisdiction because it didn't issue by a federal authority, but issued by one of the ministries that belong to the executive power. The agent of each party reiterated his previous statements and requests, and where there is nothing left to say, the end of the argument has been made clear and 10 November 2021 was appointed as the date for the decision, in which the court was formed and issued the following decision publicly.

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The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff Adel Abbas Alwan, former President of Babylon University, claimed through his agent that the defendant/ being in this capacity the Minister of Higher Education and Scientific Research had modified his career and referred him to retirement under the ministerial order in number (Qaf/4/5/660) On 5 July 2020, without legal basis and regard to the controls of jurisdiction and hierarchy, bypassing all executive and legislative references and contrary to the principle of separation of powers under article (47) of the Constitution of the Republic Iraq 2005, and requested to judge by the cancellation of the aforementioned ministerial order and his return to a career as President of the University of Babylon, and by reviewing the drafts and defends presented by both parties by this Court and official documents shown in the case that the plaintiff had been referred to retirement for reaching the legal age according to a ministerial order issued by the Minister of Higher Education and Scientific Research. Moreover, the plaintiff and his agent had confirmed in the petition of the case and the shown drafts by his agent which attached to the case's dossier, in addition, that the plaintiff and his agent answered on the argument session dated 27/10/2021 that the order of referring to retirement issued by the defendant/ being in this capacity and no other procedure issued by

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the Cabinet in this concern. Therefore, trying the case of the plaintiff is out of the jurisdiction of the Court which stipulated in article (93) of the Republic of Iraq Constitution for 2005 because the ministerial order (case subject) issued by a Ministry that belongs to the executive power, not by a federal authority. Thus, the case of the plaintiff Adil Abbas Alwan Al-Musawi must be rejected for incompetence and to burden him the fees, expenses, and the advocacy fees for the agent of the defendant/ being in this capacity, the legal counselor Ph.D. Ahmed Jaafar Shawi amount of one-hundred thousand Iraqi dinars. The decision has been issued unanimously, decisive and binding for all powers according to the articles (93 and 94) of the Republic of Iraq Constitution for 2005, and articles (4 and 5/2nd) of the Federal Supreme Court Law No. (30) for 2005 which amended by the Law No. (25) for 2021. The decision has been made clear on 4/Rabeaa Al-Akhar/1443 Hijri which coinciding 10/November/2021 AD.

**Signature of
The president**

**Jasem Mohammad
Abbood**

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