

Republic of Iraq  
Federal Supreme Court  
Ref. 11 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 7/3/2023 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Dyar Mohammed Ali, and Munthir Ibrahim Hussein who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Asmaa Abdul Lateef Mizaal – her agent the barrister Abdul Sattar Mohammed Ali.

The Defendants: 1- The Minister of Health/ being in this capacity.

2- The Director-General of Baghdad Health Directorate/ being in this capacity.

3- The Dean of Education College for Pure Science – Ibn Al-Haytham/ being in this capacity.

4- The Director-General of the National Center for Administrative Development and Information Technology/ being in this capacity.

### **The Claim**

The plaintiff claimed through her agent that the Third Defendant Department issued the two letters numbered (4143 and 4144) on 1/11/2021 which included the description of the certificate granted by the College of Education for Pure Sciences (for graduates of the academic year 2011/2012 and below - granted a bachelor's degree in science in the specialization) and (graduates of the academic year 2012/2013 and above - granted a bachelor's degree in education in the specialization) based on previous instructions issued by the same department, based on that, the fourth defendant issued his letter No.

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(2443) on 10/11/2021, which included ((The job description for graduates of the College of Education for Pure Sciences - Ibn Al-Haytham for the years (2011/2012) and below coincides with the job description for graduates of the colleges of science (biology, chemistry sciences, physics sciences)), in implementation of this, the Second Defendant Department rejected the plaintiff's request to grant her the title of (biological assistant) according to letter No. (18861) on 14/4/2022 because her graduation is in the academic year (2012/2013) as stipulated in the circulars issued by the first defendant No. (72954) on 25/11/2022 and since the subjects in the Department of (Biology) in the said college for the academic year (2011/2012) and below are the same as those that were taught in the academic year (2012/2013) in which the plaintiff graduated as indicated in the two letters numbered (1897 on 6/10/2022) and (36 on 25/10/2022) issued by the third defendant, Therefore, the instructions for the description of the certificate issued by the third defendant are contrary to the Constitution in Articles (19/6<sup>th</sup>, 16 and 14) of the Constitution, which affirmed the right to fair treatment, the principle of equal opportunities and the principle of equality, because it granted a certain privilege to a specific category and deprived the second category of it without any scientific justification, which caused harm to it as a result of not amending its job title to (biological assistant), and deprived it of functional work in laboratories according to the competence of its certificate, and of the allowances granted to its employees. amounting to (80%) of the nominal salary, as her certificate was considered administrative and not scientific, as well as depriving her of the opportunity to work in laboratories outside the official working hours, as she chose to study in the aforementioned college to be able to work laboratory during and outside the working hours, and began studying in (2009/2010), meaning that she studied three stages

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within the years in which the college grants a certificate (Bachelor of Science in the specialty) and that the fourth year of her study only is among the years in which graduates of that college grant a certificate (Bachelor of Education), so neglecting three academic years and relying on one year in granting the certificate. And the job title is considered unfair and unfair to her, Therefore, she requested the court to cancel the instructions contained in letters (4143 and 4144) and the letters on which they were based, based on Article (93/3<sup>rd</sup>) of the Constitution and Article (20) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022. The case was registered with this court with the number (11/federal/2023) and the legal fee for it was collected in accordance with the provisions of Article (21/1<sup>st</sup>) of the Court's Rules of Procedure, and the defendants shall be informed of its petition and documents in accordance with item (2<sup>nd</sup>) of the same article, the answer of the fourth defendant was received according to the letter of the Ministry of Planning No. (4/5/7309) on 6/3/2023, according to which he requested the dismissal of the lawsuit due to the lack of jurisdiction of the court to hear it and the litigation did not go to the National Center for Administrative Development and Information Technology for lack of jurisdiction in the subject matter as it falls within the jurisdiction of the Ministry of Higher Education and Scientific Research, After completing the procedures required by the court's rules of procedure, a date was set for the pleading in accordance with Article (21/3<sup>rd</sup>) thereof and the parties were informed of it, and on the appointed day, the court was formed, and the plaintiff's attorney attended and the defendants did not attend, despite being informed in accordance with the law, and the public adversarial pleading was initiated, the plaintiff's attorney repeated what was stated in the lawsuit petition and requested a judgment in accordance with what was stated therein, and the court reviewed what

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was stated in the fourth defendant's list linked to the lawsuit papers, the plaintiff's agent repeated his previous statements and requests, and where nothing remained 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 filed the case before this court based on the provisions of Article (93/3<sup>rd</sup>) of the Constitution of the Republic of Iraq of 2005 and Article (20) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, to demand a ruling that the instructions contained in the two letters issued by the third defendant / Dean of the College of Education for Pure Sciences - Ibn Al-Haytham / being in this capacity No. (4143 and 4144) on 1/11/2021 and canceling them, and the ruling to cancel the letters that were based on the instructions contained in the aforementioned letters, because it violates the provisions of Articles (14, 16 and 19/6<sup>th</sup>) of the Constitution, which affirm that "Iraqis are equal before the law without discrimination on grounds of sex, race, nationality, origin, color, religion, sect, belief, opinion, economic or social status." (Equal opportunities are a right guaranteed to all Iraqis, and the State shall ensure that the necessary measures are taken to achieve this) and (Everyone has the right to be treated fairly in judicial and administrative proceedings) following the details referred to in the petition. Whereas the jurisdiction of this court is held following the provisions of Article (93/3<sup>rd</sup>) of the Constitution, which stipulates that (the Federal Supreme Court shall have the following competencies: Third: Adjudicating cases arising from the application of federal laws, decisions, and regulations, instructions, and procedures issued by the federal authority, and the law guarantees the right of both the Council of

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Ministers and the concerned parties, individuals and others, the right to appeal directly to the court), article (4/3<sup>rd</sup>) of the Federal Court Law No. (30) of 2005, as amended by Law No. (25) of 2021, which came in the same form, and in accordance with Article (25) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022 published in the Iraqi Gazette No. (4679) on 13/6/2022, requires the fulfillment of the conditions stipulated by those texts, including that the decisions, regulations, instructions, and procedures subject to challenge are invalid, issued by one of the federal authorities stipulated in Article (47) of the Constitution or one of the bodies stipulated in Chapter 4<sup>th</sup> of section Three of the Constitution (independent bodies) based on the provisions of paragraph (2<sup>nd</sup>) of Article (25) of the aforementioned internal system, and since Article (47) of the Constitution specified the federal authorities in the Iraqi State, Article (66) of it indicated the components of the executive authority, as it stipulated that (the federal executive authority consists of the President of the Republic and the Council of Ministers, exercising its powers following the Constitution and the law), and since the instructions subject to the challenge are invalid contained in the two letters No. (4143 and 4144) on 1/11/2021, The letters issued based on the aforementioned instructions are issued by bodies that are not considered by one of the federal authorities stipulated in the Constitution according to their description referred to above, which means that the Federal Supreme Court is not competent to consider the validity of the instructions subject to challenge contained in the two aforementioned letters, as well as not competent to consider the validity of the letters issued based on those instructions because they were not issued by one of the federal authorities in the Iraqi State stipulated in the Constitution. Thus, the plaintiff's lawsuit should be rejected in form of lack of jurisdiction, and for the foregoing, the Federal Supreme Court

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decided to reject the plaintiff's lawsuit Asmaa Abdul Latif Miz'al in form of lack of jurisdiction and to burden her with expenses and fees. The decision has been issued unanimously, final, and binding for all authorities according to the provisions of articles (93/3<sup>rd</sup> and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4/3<sup>rd</sup> and 5/2<sup>nd</sup>) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been edited in the session dated 14/Shaaban/1444 Hijri coinciding with 7/March/2023 AD.

**Judge**  
**Jassim Mohammed Abbood**  
**President of the Federal Supreme Court**

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