

Republic of Iraq
Federal Supreme Court
Ref. 164 / federal /2023



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The Federal Supreme Court (F S C) has been convened on 26/9/2023 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, Abdul Rahman Suleiman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Raid Hussein Ali.

The Defendants- The Prime Minister/ being in this capacity.

2- The Secretary-General of the Cabinet/ being in this capacity.

Their
agent the
legal
counselor
Hayder
Ali Jaber

The Claim

The plaintiff claimed in the petition that the second defendant issued his letter No. (Qaf/2/5/40/42/3211 on 5/7/2023), which includes considering him (Acting Director General) and instructing the Federal Financial Supervision Bureau to take action accordingly, since this decision was contrary to the law, unfair, and infringing on his rights, 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: 1- In light of the correct legal conditions, the plaintiff has already been appointed as an inspector general in the Supreme Commission for Hajj and Umrah under Diwani Order No. (6) issued in the letter of the Prime Minister's Office No. (Mim. Ra. Nun/Dal 2/78/905 on 20/1/2014), then he was transferred to the position of Inspector General in the Ministry of Labor and Social Affairs under Diwani Order No. (11/Sin) issued in the Prime Minister's Office letter No. (Mim.Ra.Waw/Sin/1326 on 19/6/2016) and then he was appointed Inspector General at the Ministry of Industry and Minerals under Diwani Order No. (22S) issued in the letter of the Prime Minister's Office No. (Mim.Ra.Waw/Sin/Dal 6/20/1619 on 14/5/2019). 2- On 28/10/2019, Law

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No. 24 of 2019 (Law on the Cancellation of the Dissolved Coalition Provisional Authority Order No. 57 of 2004) was issued, followed by Cabinet Resolution No. 389 of 2019, as amended by Cabinet Resolution No. 464 of 2019, which stipulates in paragraph 3 that: (The inspector general who does not meet the age requirement shall continue with the same grade in the entity in which he was working, and the competent minister or the head of the entity not associated with a ministry shall propose his appointment as an undersecretary. or a consultant or general manager...) which have been confirmed by the decisions of the Federal Supreme Court, accordingly, it was transferred from the Ministry of Industry and Minerals to the Property Claims Authority with the functional grade (Supreme A) and the financial allocation to occupy the position of Vice Chairman of the Authority according to Diwani Order No. (195) issued in the letter of the Prime Minister's Office No. (Mim.Ra.Waw/Dal 7/20/4043 on 1/9/2020) and confirmed by the letter of the Prime Minister's Office No. (Mim.Ra.Waw/Dal 7/5/6096 on 4/10/2020), and all transfer procedures were completed, including the transfer of financial allocation under the letter of the Ministry of Finance, Budget Department, number (273 on 7/1/2021), and since the issuance of the Diwani Order (195) until the date of submission of this regulation, his legal status in the Property Claims Authority has been regulated on the functional grade (higher A), which is a special grade equivalent to the degree of the inspector general, and financial matters have been calculated accordingly, which include (annual bonuses, tax accounting and retirement deductions), all according to the entitlement of a special degree (higher A) incumbently. 3- The Ministry of Finance is the competent authority for public service affairs in the Iraqi state exclusively, and it has stated its opinion regarding inspectors before the Federal Supreme Court and in several previous communications, the latest of which is its letter No. (20944 on 1/6/2023). 4- The staff of the Property Claims Commission for the years 2019-2020 did not include the grade (higher A) according to the letter of the Ministry of Finance No. (27085 on 1/11/2020), and after transferring it

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to the Property Claims Authority with his job grade (senior A), it was stipulated in the Federal Budget Law for the year 2021 in Table (Jim) on page 56 of the Iraqi Gazette, as well as the same grade was mentioned in the Federal Budget Law for the years (2023, 2024, and 2025) in Table (Jim) on page 64 of the Iraqi Gazette. 5- The Administrative Court had previously issued its decision No. (2185/2022 on 8/6/2022), which acquired the final degree of cassation by the Supreme Administrative Court's decision No. (2432/2022 on 6/7/2022) granting the plaintiff a special passport based on the provisions of Article (16/1st/1) of the amended Passport Law No. (2) of 2011, which ruled to grant a special passport to holders of special degrees who occupy their jobs originally, and when the court was sure that it was considered a special degree of originality and continuity in the job, it issued its decision above, which is revealing On the legal status and functional grade based on the legal texts and rules laid down for them, and that the judgments issued by the Iraqi courts that have acquired the degree of bits shall be an argument in what they have decided, and no evidence may be accepted that contradicts the authority of the final judgments following the provisions of Articles 105 and 106 of the Evidence Law No. 107 of 1979, as amended. 6- Some of his peers with similar legal positions had argued with the defendants before this court, which issued its decision No. (218/Federal/2022) dated 19/12/2022, and the judgment paragraph (4th) of it stipulated ((that transferring the general inspectors appointed mainly to other positions in the ministries attributed to it and authorizing the minister to reappoint them as undersecretary, adviser, or general manager does not mean that they are covered by the provisions of article (61/5th/Beh) of the constitution..., because they have acquired legal status, under Diwani Order No. (72) of 2008, which is still in force, and the dissolution of the offices does not mean the abolition of their legal positions, therefore, there is no legal basis for re-presenting them to the Council of Ministers to recommend to the Council of Representatives for appointment, and that those who have been transferred deserve the job titles to which they are transferred, provided

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that they are not higher than their previous addresses, it is not permissible to convert an employee on the permanent staff and appointed in person to an acting employee contrary to the provisions of the law, and without support from him)) as stipulated in paragraph (5th) thereof ((that the inspector general who is not covered by retirement remains retaining the same job grade in the government agency to which he is assigned and its staff only, however, the aforementioned decision empowered the minister to propose his appointment according to the need of the ministry and its vacant cadres in the position of undersecretary, adviser or general manager, and the proposal for appointment does not mean re-appointing him again because it is not permissible to appoint the employee twice in the same job grade, but rather the proposal for appointment for the appointed employee is intended to match the job grade with the grades of the ministry's staff attributed to it according to the ministry's need and the grades allowed by its staff, in light of the discretionary power possessed by the competent minister for the purpose of interest. and the proper functioning of the public office in a manner that ensures the continuation of the work of public utilities regularly and steadily)), it also stipulates that: ((The role of the General Secretariat of the Council of Ministers is limited to the implementation of the decisions of the Prime Minister, after which the executive authority of the Council of Ministers and its decisions, which is responsible for following up the implementation of those decisions and has no right to obstruct their implementation or object to that implementation contrary to the provisions of the Constitution and the law, and to say otherwise means to suspend the decisions of the Prime Minister...)). 7- The court also previously issued its fair decision No. (18/Federal/2023) dated 3/4/2023, and stipulated in its judgmental paragraphs ((Administrative and Diwaniyah decisions and orders remain in force and their effects are arranged from the date of their issuance unless they are withdrawn or canceled by the authority that issued them following the law or ruled invalid by the judiciary, this requires compliance with it from all state institutions, to ensure the proper functioning of public

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utilities regularly and steadily)). 8- Although the court's decisions are final and binding on all authorities under the provisions of article 94 of the constitution, their authority is not limited to the parties to the lawsuit only and applies to everyone, whether individuals or state authorities, and their effects are not limited to the litigants of the lawsuit, but also to all those addressed by this text, which entails their benefit from the legal status created by the judgment, whether it arranged benefits or held rights, which was confirmed in the letter of the Federal Supreme Court No. (120/Federal/2023/1279 on 15/6/2023), however, the second defendant's department had a different opinion on it, sometimes claiming that they are decisions of relative authority whose effects are limited to the parties to the lawsuit, and sometimes it interprets them away from its judgment, as in its letter above (subject to appeal), and at other times seek the opinion of the Council of State. 9- With regard to what is stated in the paragraphs of the letter of the second defendant above - the subject of the appeal - and according to their sequence, paragraph (1) thereof affirms that the occupancy or transfer of inspectors general to other senior positions is by assignment and not an appointment, and the taxpayers receive the salaries and allowances of the position assigned to them, which has no basis in the law and contrary to all the judicial rulings mentioned above, and paragraph (2) thereof went to the court's decision regarding the general inspectors who were appointed under Diwani Order No. (47) of the year 2019 which does not apply to the plaintiff's case, as for paragraph (3) thereof, it refers to the system of formations of the Property Claims Authority No. (4) of 2010, which cannot be relied upon in the downgrading of his job grade (higher a) authentically to the rank of director general of an agency, as the downgrading of the employee's job grade to a grade lower than the job grade he occupies has been determined by law through two ways, but through a disciplinary penalty under the provisions of article (8/6th) of the State Employees Discipline Law No. (14) of 1991, as amended, Or through evaluation of poor performance under the provisions of Article (1st) of the dissolved

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Revolutionary Command Council Resolution No. (880) of 1988, and these two cases are not available to him, but on the contrary, he has more than (100) letters of thanks and appreciation and there is no disciplinary penalty against him during his career spanning more than (25) years, the legal status that arose, completed and became an acquired right under a certain legal status, may not be prejudiced if the legal situation changes after that, and every breach of this right is considered contrary to the law, especially if this legal status has been stable for many years, and the principle of justice requires not to deprive a person of a right acquired in the past time, and the principle of stability of legal centers requires that legal centers should not remain threatened indefinitely. Therefore, the plaintiff asked this court to rule that the decision issued in the letter of the General Secretariat of the Council of Ministers No. (Sin/2/5/40/42/3211 on 5/7/2023), which includes considering him (Acting Director General), and obliging the defendants to implement Diwani Order No. (195) of 2020 and consider it a special degree (higher A) authenticity and charge them fees, expenses, and advocacy fees. The case was registered with this court under the number (164/Federal/2023) the legal fee was collected and the defendants were informed of their petition and documents in accordance with the provisions of Article (21/1st and 2nd) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and their agent replied in the response regulation dated 1/8/2023 that the appeal against the opinions issued by the General Secretariat of the Council of Ministers is outside the jurisdiction of the court, and this is what its judiciary has settled on in many decisions, the offices of the inspectors general were established by Order No. 57 of 2004 of the Coalition Provisional Authority (dissolved) (as amended) by Legislative Order No. 19 of 2005, according to which the Inspector General is appointed by the Prime Minister based on a nomination by the Integrity Commission and receives the salary and allowances of an undersecretary, and the State Council has resolved the issue of transferring the holders of special degrees by its decision No. (67/2021) dated 4/10/2021 when it approved its legal principle of (The decision to

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transfer the employee originally appointed to a post of the special grade (A) or one of the posts of grade (B) to one of the addresses located in the same grade shall be by a decision of the appointing authority, with the fulfillment of the conditions required in each post and the appointment procedures, in addition, the appointment of holders of special degrees is completed by the issuance of the presidential decree in line with the provisions of item (5th) of article 61 of the constitution, which stipulated that the Council of Representatives is competent to approve the appointment of holders of special degrees upon a proposal from the Council of Ministers and that item (5th) of article 80 of the constitution stipulated that the Council of Ministers exercise the authority to recommend to the Council of Representatives to approve the appointment of undersecretaries of ministries and holders of special degrees, and paragraph (2) of article (eighth) of the Civil Service Law No. (24) For the year 1960 (as amended) it stipulated that the appointment of holders of special positions shall be by presidential decree, this means that the plaintiff does not fulfill the formalities specified constitutionally and legally for appointment and that the job grade is not assumed, but is stipulated by law, and that Legislative Order No. (19) of 2005 has stipulated that: (The Inspector General receives the salary and allowances of an undersecretary) and did not stipulate that the inspector general is an undersecretary or a special grade, but the text only mentions his receipt of the salary and allowances of an undersecretary, if the legislator wanted the Inspector General to be to this degree or to a special degree, he would have stipulated this explicitly and categorically, as he did in other orders, including for example, Order No. (12) of 2005 (the authority of the President of the Interim National Council, the President of the Cabinet, and his advisors), where articles (2 and 3) of it indicate that the President of the Bureau and the advisors occupy a special grade class (A) and therefore the Inspector General is not considered a holder of special grades and that the Independent High Electoral Commission Law No. (31) of 2019 has dealt in article (35/ second and third) thereof with the issue of exempting the Board

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of Commissioners in referring them to retirement or confirming them in state institutions and their last job grades, as well as the transfer of (general directors) with their grade and financial allocation outside the staff of the Independent High Electoral Commission, while the Law on the Repeal of the Coalition Provisional Authority Order No. 24 of 2019 did not address the issue of installing general inspectors in state institutions or transferring them with job grades explicitly, as is the case in the above law if compared to that, rather, the matter entrusted the Council of Ministers with issuing the necessary decision against them, and indeed a decision was issued by the Council of Ministers No. (389) of 2019, amended by Resolution No. (464) of 2019, whose validity was upheld by the court with its decisions numbered (218/federal) and (22/federal/2023), as stipulated in article (41) of the Civil Service Law No. (24) of 1960 (as amended): (If the employee's job is canceled and available on the date of cancellation in the department to which a vacant job is affiliated, its work is similar to the work of his job and from his grade, he shall be considered transferred to it with his current salary. If the vacancy is of a grade lower than his grade, he shall choose to accept it or not, and if he accepts it in writing, he must be appointed to that position), and the application of this article is limited to the department to which the employee belongs, while the appealed Diwani order included the transfer of the plaintiff to a department to which he does not belong, in addition to the fact that this text is limited to first-class employees or below, with evidence that it referred to the department to which he belongs, concerning Article (First) of the Civil Service Law above, as the aforementioned provision applies in the absence of an explicit provision to the contrary, while the Law on the Repeal of the Order of the Coalition Provisional Authority (Dissolved) No. (57) of 2004 has indicated how to address the situation of those covered by its provisions. Beyond the foregoing, what was stated in the contested letter is the insistence of the Property Claims Authority that the vice chairman of the authority be in a special degree, contrary to the provisions of article 1/2nd of the system of formations of the Property Claims Authority No.

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4 of 2010, according to which ((the chairman of the authority has a deputy with the rank of the general manager who holds an initial university degree in law and has experience and competence appointed following the law)), so the defendant's agent requested to dismiss the lawsuit and charge the plaintiff expenses, fees, and advocacy fees. After completing the procedures required by the court's rules of procedure, a date was set for the pleading, in which the court was formed, and the plaintiff and the defendants' attorney attended and began to conduct the public presence pleading, the plaintiff repeated what was stated in the lawsuit petition and requested a ruling accordingly, the defendants' agent answered and requested the dismissal of the lawsuit for the reasons stated in the list linked to the lawsuit papers, each party repeated its previous statements and requests, and since there is nothing left to say, 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 lawsuit before this court against the first defendants, the Prime Minister and the second the Secretary-General of the Council of Ministers, being in this capacity, to demand that they be obliged by virtue of the implementation of the Diwani Order No. (195) issued by the Prime Minister's Office No. (Mim.Ra.Waw/Dal 7/20/4043) on 1/9/2020, which includes ((First: Transfer of the services of (Raed Hussein Ali Al-Baldawi), former Inspector General of the Ministry of Industry and Minerals, with the functional grade (Supreme A) and financial allocation to the Property Claims Authority, and he lives with the title of deputy Chairman of the Commission. Second: This order shall be implemented from the date of its issuance)), the General Secretariat of the Council of Ministers refrains from implementing it, based on what is established under the letter of the General Secretariat of the Council of Ministers / Legal Department No.

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(Sin/2/5/40/42/3211 on 5/7/2023), which includes considering the plaintiff (Acting Director General), and also demanding a ruling that the decision issued in the aforementioned letter of the General Secretariat of the Council of Ministers is invalid because this is contrary to the provisions of the Constitution of the Republic of Iraq for the year 2005 and the rulings issued by this court in this regard, the laws in force and the relevant decisions of the Council of Ministers. Fees, expenses, and advocacy fees, based on the provisions of Article (93/3rd) of the Constitution of the Republic of Iraq, the Federal Supreme Court finds that the plaintiff's claim is admissible in form due to the fulfillment of the conditions for its establishment stipulated in Articles (44, 45, 46 and 47) of the Civil Procedure Law No. (83) of 1969, as amended, in addition to the interest condition stipulated in Article (6) thereof, and the fulfillment of the conditions stipulated in Article (25) of the Internal Regulations of the Federal Supreme Court No. (1) of 2022, which stipulates that: (Any interested party shall have a direct appeal to a lawsuit, which shall be submitted to the court to adjudicate cases arising from the application of federal laws, decisions, regulations, instructions, and procedures issued by the federal authority in accordance with the following conditions:...) In terms of Article (20) thereof, which lies in the interest of the plaintiff when filing the lawsuit, It is a case and influential in his legal, financial, and social status, and upon consideration of its subject matter, it was found that the plaintiff is covered by the provisions of paragraph (third) of the Council of Ministers Resolution No. (389) of 2019 amended by Resolution No. (464) of 2019 due to the issuance of Law No. (24) of 2019 (Law on the Cancellation of the Dissolved Coalition Provisional Authority Order No. 57 of 2004) regarding the dissolution of the offices of general inspectors, for his previous appointment as an original inspector general in the Supreme Commission for Hajj and Umrah under Diwani Order No. (6) issued in a letter Prime Minister's Office (Mim.Ra.Nun/Dal 2/78/905 on 20/1/2014), then he was transferred to the position of Inspector General at the Ministry of Labor and Social Affairs under Diwani Order No. (11/Sin) issued in the letter of the

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Prime Minister's Office No. (Mim.Ra.Waw/Sin/1326 on 19/6/2016) and then he was appointed Inspector General at the Ministry of Industry and Minerals under Diwani Order No. (22S) issued in the letter of the Prime Minister's Office No. (Mim.Ra.Waw/Sin/Dal 6/20/1619 on 14/5/2019), and regarding paragraph (3rd) of the Cabinet Resolution No. (389) of 2019 amended by Resolution No. (464) of 2019, the Federal Supreme Court finds:1-The Council of Ministers, represented by its President, is one of the federal authorities stipulated in Article (47) of the Constitution, and thus subject to the provisions of the Constitution, and its powers and powers are restricted by the provisions of Article (80) thereof, but it enjoys discretionary power in the field of application of some of those competencies, especially those stipulated in paragraph (5th) of the aforementioned article related to recommending to the Council of Representatives to approve the appointment of undersecretaries of ministries, ambassadors and holders of special degrees... etc, as far as the mechanism by which the person who holds the aforementioned positions is nominated, selected, recommended and withdrawn, the discretionary power of the Council of Ministers in this area means: its freedom to choose between the available alternatives that compete among themselves to provide different solutions in the same subject, and to compare them according to logical bases, to provide the most appropriate for the public interest, and the most appropriate to meet its requirements and preserve its values, provided that this is done in accordance with the principle of constitutional legality, and on the basis of the foregoing, each of the authorities, including the executive authority, It must work within the framework of the principle of legality and the rule of law, even if it uses its discretion in order to accomplish its tasks, and thus its use of its discretion is not absolute, but rather restricted within the limits of control exercised over it by constitutional institutions, including the Federal Supreme Court, in application of the provisions of Article (93/3rd) of the Constitution. 2- The competence of the Council of Ministers to nominate for the position of undersecretaries of ministries, ambassadors, holders of special degrees and

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others, and to recommend to the Council of Representatives the appointment of the aforementioned positions in the application of the provisions of Article (80) of the Constitution, and the issuance of a decision by the Council of Ministers to that effect, requires the availability of machinery in the candidate that qualifies him to occupy the aforementioned position, based on science, experience, competence and integrity, and conditions in the decision issued for nomination and recommendation lie in the competence, place, and reason, in addition to the public interest that the decision seeks to provide the state departments with efficient elements to ensure the work of public utilities. regularly and steadily to provide the best services to citizens, if the conditions for nomination are different in the candidate for the aforementioned position or the public interest requires the withdrawal of the recommendation for candidacy before the issuance of the Council of Representatives' decision on appointment, there is nothing to prevent the withdrawal of the nomination and recommendation, and this is not contrary to the provisions of the Constitution of the Republic of Iraq of 2005, in particular Article (80) thereof, as the competence of the Council of Ministers to nominate the recommendation for appointment does not preclude the aforementioned Council and its competence to withdraw the recommendation and nomination, if there are serious reasons that require it in light of the discretionary power enjoyed by the Council of Ministers in this regard, restricted by the public interest and the means of achieving it and the reason that prompted the withdrawal of the recommendation, provided that this is done before the appointment and approval of the recommendation of the Council of Representatives, and the withdrawal of the recommendation for candidacy, in accordance with the aforementioned detail, does not conflict with the principle of separation of powers referred to in Article (47) of the Constitution, as long as the withdrawal of the nomination and recommendation was made by the same administrative authority that issued it; This is subject to the supervision of the Federal Supreme Court in application of the provisions of Article (93/3rd) of the Constitution of the

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Republic of Iraq. 3- Article (3/1st) of Law No. 24 of 2019, the Law on the Repeal of the Dissolved Coalition Provisional Authority Order No. 57 of 2004, according to which the issue of the inspector general who is not covered by retirement was addressed by authorizing the Council of Ministers to have the authority to deal with such treatment, based on the decision issued by it in this regard, in particular, paragraph (3) of the Council of Ministers Resolution No. (389) of 2019 as amended by Resolution No. (464) of 2019, it was consistent with the competencies of the Council of Ministers contained exclusively in paragraphs (1st and 3rd) of Article (80) of the Constitution of the Republic of Iraq for the year 2005, which stipulated that: (The Council of Ministers shall exercise the following powers: First: Planning and implementing the general policy of the State, general plans, supervision of the work of ministries, and entities not associated with the Ministry of... Third: Issuing regulations, instructions, and decisions, to implement laws), and therefore paragraph (3) of the aforementioned amended Cabinet Resolution was issued based on the competence of the Council of Ministers to supervise the work of ministries and its competence in implementing paragraph (3/1st) of Law No. (24) of 2019 mentioned above in application of the provisions of Article (80/1st and 3rd) of the Constitution. 4- After the repeal of the dissolved Coalition Provisional Authority Order No. (57) of 2004 by Law No. (24) of 2019 and based on the provisions of Article (3/1st) thereof, paragraph (3) of the aforementioned amended Cabinet Decision was issued, and therefore the transfer of inspectors general appointed mainly to other positions in the ministries attributed to them and authorizing the minister to reappoint them as under-minister, adviser, or general manager does not mean that they are covered by the provisions of article 61/5th/Beh of the constitution, which stipulates that: (The Council of Representatives shall have the following competencies: Fifth: Approving the appointment of Ambassadors and holders of special degrees, upon a proposal from the Council of Ministers), they are not covered by the provisions of Article (80/5th) of the Constitution, which stipulates that: (The Council of

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Ministers shall exercise the following powers: Fifth: Recommending to the Council of Representatives to approve the appointment of undersecretaries of ministries, ambassadors and holders of special degrees...) , because they have acquired legal status under Diwani Order No. (72) of 2008, which is still in force, and the dissolution of the offices does not mean the abolition of their legal centers, therefore, there is no legal basis for re-presenting them to the Council of Ministers to recommend to the Council of Representatives for appointment, and 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 person to an acting employee contrary to the provisions of the law and without support from it, and this is what the Federal Supreme Court settled on in many of its rulings, including its ruling No. (218/Federal/2022) on 19/12/2022. 5- The issuance of Cabinet Resolution No. (389) of 2019, as amended by Resolution No. (464) of 2019, was the result of the issuance of Law No. (24) of 2019 (Law on the Cancellation of the Order of the Dissolved Coalition Provisional Authority No. 57 of 2004), as Article (3/1st) of the law stipulates that: (Those who occupy the position of inspector general shall be referred to retirement in accordance with the Unified Retirement Law No. 9 of 2014, while those who are not covered by the retirement law shall be issued by the Council of Ministers to issue the necessary decision against them or they shall be returned to their previous government positions exclusively in government institutions), which means that this article empowered the Council of Ministers to issue the necessary decision to address the issue of who held the position of inspector general, who are not covered by the retirement law or are reinstated in their previous jobs, the Council of Ministers issued paragraph (3) of its above-mentioned amended resolution, which stipulates that: "The inspector general who does not meet the age requirement shall continue with the same grade in the entity in which he was working, and the minister or the head of the entity shall continue to not related to a ministry by

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proposing his appointment as undersecretary, advisor, or director general), and on the basis of the foregoing, the inspector general who is not included in retirement shall retain his same job grade, in the government entity attributed to it and according to its staff, However, the aforementioned decision empowered the Minister to propose his appointment according to the need of the Ministry and its vacant staff as an advisor, undersecretary or general manager, and that the proposal for appointment does not mean re-appointing him again because it is not permissible to appoint the employee twice in the same job grade, but rather the proposal for appointment for the appointed employee is intended to match the job grade with the grades of the Ministry's staff attributed to it according to the Ministry's need and the grades allowed by its staffing in light of the discretionary power possessed by the competent minister for the purpose of general interest, and the proper functioning of the public function to ensure the continuation of the work of public utilities regularly and steadily, on the basis of the foregoing, paragraph (3) of the aforementioned Cabinet Resolution is consistent with the provisions of Article (41) of the Civil Service Law No. (24) of 1960, as amended, which states: (If the employee's job is canceled and available on the date of cancellation in the department to which he is affiliated, a vacant job whose work is similar to the work of his job and from his grade, he shall be considered transferred to it with his current salary assigned to that job). As for the Diwani order demanding that the defendants, in addition to their functions, be obliged to implement it No. (195) issued by the Prime Minister's Office No. (Mim.Ra.Waw/Dal 7/20/4043) on 1/9/2020, which includes: ((First: Transferring the services of (Raed Hussein Ali Al-Baldawi), former Inspector General of the Ministry of Industry and Minerals, with the job grade (Supreme A) and financial allocation to the Property Claims Authority, and he lives in the title of Vice President of the Authority. Second: This order shall be implemented from the date of its issuance, as the General Secretariat of the Council of Ministers refrained from implementing it based on what is established according to the letter of the General Secretariat of the

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Council of Ministers/ Legal Department No. (Qaf/2/5/40/42/3211 on 5/7/2023), included in paragraph (1) thereof (We affirm that the occupancy of the inspectors general after the issuance of Law No. (24) of 2019 Law to cancel the order of the dissolved Coalition Provisional Authority No. (57) of 2014 for other senior positions or transfer them shall be by assignment and not appointment, and the taxpayers shall receive the salaries and allowances of the position assigned to them...) The Federal Supreme Court finds the following: 1- The plaintiff was appointed as Inspector General in the Supreme Commission for Hajj and Umrah under Diwani Order No. (6) issued in the Prime Minister's Office letter No. (Mim.Ra.Nun/Dal 2/78/905 on 20/1/2014), then he was transferred to the position of Inspector General at the Ministry of Labor and Social Affairs under Diwani Order No. (11/Sin) issued in the Prime Minister's Office letter No. (Mim.Ra.Waw/Sin/1326 on 19/6/2016) and then he was appointed Inspector General at the Ministry of Industry and Minerals under Diwani Order. No. (22Sin) issued in the letter of the Prime Minister's Office No. (Mim.Ra.Waw/Sin/Dal 6/20/1619 on 14/5/2019). 2- With the issuance of Law No. (24) of 2019 (Law on the Cancellation of the Order of the Dissolved Coalition Provisional Authority No. 57 of 2004), and the Council of Ministers Resolution No. (389) of 2019 as amended by Cabinet Resolution No. (464) of 2019 and to include it in the provisions of paragraph (third) thereof, and to enjoy a functional legal status based on Diwani Order No. (72) of 2008, then transfer its services with its functional grade and financial allocation at the grade (higher A) to occupy a position of Director General of incumbently according to Diwani Order No. (195) issued by the Prime Minister's Office No. (Mim.Ra.Waw/Dal 7/20/4043) on 1/9/2020 which includes (First: Transfer of services (Raed Hussein Ali Al-Baldawi) Former Inspector General of the Ministry of Industry and Minerals with the functional grade (senior A) and financial allocation to the Property Claims Authority and live at the address of the Vice-Chairman of the Authority. Second: This order shall be implemented from the date of its issuance. 3- Based on the provisions of the Angel Law

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No. (25) of 1960 as amended and the Law of the Ministry of Finance No. (92) of 1981 and the competence of the Ministry of Finance in public service affairs based on the provisions of Articles (1 and 7) of the aforementioned law, the Ministry of Finance / Budget Department / Staff/ 403 / Division of Non-Associated Entities and the three presidencies by virtue of its letter No. (273) on 7/1/2021, the plaintiff with the job title transferred to him in proportion to the Authority's staff after the deletion and creation procedure to occupy the position of Director General of Authenticity at the (Higher A) grade In the Property Claims Authority based on the Diwani order issued in this regard mentioned above, based on the approval of the Prime Minister's Office according to its letter No. (Mim.Ra.Waw/Dal 7/5/6096) on 4/10/2020 indicated under paragraph (2) thereof: Diwani Order No. (195) of 2020 did not include the appointment of Raed Hussein Ali Al-Baldawi - the subject of the research - but rather the transfer of his services with his job grade (senior A) and the financial allocation to the Authority to occupy the position of Vice Chairman of the Authority, and there is no legal impediment to transferring him with grade and allocation, and there is no legal basis for lowering the employee's grade when transferring him to another job where the transfer is With the same job grade and job title or corresponding title, which is what the judiciary of the State Council in Iraq has settled on)), in addition to the above, the Ministry of Finance expressed its opinion regarding the inspector general who assumed senior positions after the issuance of Law No. (24) of 2019 (Law on the Cancellation of the Order of the Dissolved Coalition Provisional Authority No. 57 of 2004), and Cabinet Resolution No. (389) of 2019 amended by Cabinet Resolution No. (464) of 2019 covered by the provisions of paragraph (third) thereof according to the letter of the Ministry of Finance / Legal Department / Office of the Director General addressed to the State Council, in the issue (20944) on 1/6/2023 indicated in ((... From the foregoing, the Federal Supreme Court has decided that the occupancy of the general inspectors of their positions is a matter of authenticity and that the judgment issued by the Federal Supreme Court is

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authoritative, and applies to everyone, whether individuals or state authorities based on the provisions of Article (94) of the Constitution of the Republic of Iraq for the year 2005, and its impact is not limited to the litigants of the case, but extends to all those addressed by this text, which entails their benefit from the legal status created by the judgment, whether it ranks advantages or Carrying rights... The matter has been settled by the Federal Supreme Court. 4- The aforementioned Diwani orders issued by the Prime Minister's Office related to the plaintiff were valid and followed the provisions of the law, in particular Diwani Order No. (195) issued by the Prime Minister's Office No. (Mim.Ra.Waw/Dal 7/20/4043) on 1/9/2020, for issuance based on the provisions of Article (3/I) of Law No. (24) of 2019 Law on the Cancellation of the Dissolved Coalition Provisional Authority Order No. (57) of 2004 and following paragraph (3) of the Cabinet Resolution No. (389) of 2019 as amended by Resolution No. (464) of 2019 2019, and following paragraph (1) of Diwani Order No. (72) of 2008 in force, which stipulates that ((The inspector general appointed in accordance with orders (57) of 2004 and (19) of 2005 shall be at the rank of undersecretary)), this means that Diwani Order No. (195) issued on 1/9/2020, according to which it was confirmed that the plaintiff was appointed in authenticity and not as an agency, and that his services were transferred to the entity to which he is assigned with his grade and the financial allocation at the (higher A) grade, because he was previously appointed as an inspector general in authenticity and with the rank of deputy minister, and that his appointment as director general of authenticity under the aforementioned Diwani order was commensurate with the movement of the staff of the authority to which he is attributed and based on paragraph (third) of the Council of Ministers Resolution No. (389) of 2019 amended by Resolution No. (464) of 2019, especially that paragraph (third) of the aforementioned decision was consistent with the provisions of Article (41) of the Civil Service Law No. (24) of 1960, as amended, which requires his approval, and on the basis of the foregoing, there is no place to say that the plaintiff is appointed as an agency and not authentically. 5- The

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request of the defendants' attorney in addition to their functions based on the submitted regulations and the defenses raised before this court to dismiss the plaintiff's lawsuit regarding the implementation of Diwani Order No. (195) issued by the Prime Minister's Office No. (Mim.Ra.Waw/Dal 7/20/4043) on 1/9/2020, despite its issuance in the correct legal and constitutional form, from the Prime Minister's Office of the first defendant/ being in this capacity, in addition to the issuance of the letter of the General Secretariat of the Council of Ministers / Legal Department No. (Qaf/2/5/40/42/3211 on 5/7/2023), which includes, under paragraph (1) thereof: (We confirm that the occupancy of the inspectors general after the issuance of Law No. (24) of 2019 the law to cancel the order of the dissolved Coalition Provisional Authority No. (57) of 2014 to other senior positions or transfer them shall be by assignment rather than appointment, and the taxpayers receive the salaries and allowances of the job assigned to them...), and the insistence of the defendants' attorney, being in this capacity, to implement the aforementioned Diwani order as referred to in the aforementioned letter of the General Secretariat of the Legal Department, it is considered as a refusal to implement the Diwani order issued by the Prime Minister's Office without justification, and this is contrary to what was settled by this court's judgment in this regard in many of its relevant provisions, including the judgment issued No. (218/Federal/2022) on 19/12/2022, which is final and binding on all authorities based on the provisions of Article (94) of the Constitution and Article (5/Second) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021, and Article (36) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, so this defense should be rejected, the plaintiff enjoys a functional legal status based on Legislative Decree No. (72) of 2008, and to be covered by the provisions of paragraph (3) of the Cabinet Resolution No. (389) of 2019 as amended by Resolution No. (464) for the year 2019, he was transferred to the position of Director General of Asala with his job grade and financial allocation at the (higher A) grade, to the Property Claims Authority, with the title of Vice

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Chairman of the Authority under Diwani Order No. (195) issued by the Prime Minister's Office No. (Mim.Ra.Waw/Dal 7/20/4043) on 1/9/2020 and lived in that grade with the approval of the Ministry of Finance after the deletion and creation procedure and with the approval of the Prime Minister at the time according to the letter of his office, in his capacity as a representative of the Council of Ministers, and the role of the General Secretariat of the Council of Ministers is limited to its implementation, after which the executive authority of the Council of Ministers and its decisions are responsible for following up the implementation of those decisions, and may not obstruct their implementation or object to such implementation in violation of the provisions of the Constitution and the law, to say otherwise would mean suspending the decisions of the Prime Minister in his capacity as a representative of the Council of Ministers, the direct executive officer in charge of the general policy of the state and the Commander-in-Chief of the Armed Forces, who manages the Council of Ministers and chairs its meetings in accordance with the provisions of Article 78 of the Constitution, which leads to emptying the constitutional institution of its content, especially since the decisions of the Council of Ministers or the Prime Minister issued through the Prime Minister's Office, based on the discretionary power he enjoys, in light of the provisions of the Constitution and the laws in force to achieve In the public interest and to ensure the proper functioning of public utilities regularly and steadily, they are subject to the control of the competent constitutional institutions, including the Federal Supreme Court based on its jurisdiction stipulated in Article (93/3rd) of the Constitution, on the basis of the foregoing, such decisions may not be suspended or their enforcement. Therefore, the refusal of the first defendant (Prime Minister / being in this capacity) and the second defendant (Secretary General of the Council of Ministers / in addition to his job) to implement the Diwani order that includes the transfer of the plaintiff's services with the functional grade (higher A) and the financial allocation to occupy the position of Director General of Asala in the Property Claims Authority and his placement with

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the title of Vice President of the Authority under the Diwani Order No. (195) issued by the Prime Minister's Office No. (Mim.Ra.Waw/Dal7/20/4043) on 1/9/2020, and adhering to the implementation of the letter of the General Secretariat of the Council of Ministers / Legal Department No. (Q/2/5/40/42/3211 on 5/7/2023), included in paragraph (1) thereof (We affirm that the occupancy of the inspectors general after the issuance of Law No. (24) of 2019 the law to cancel the order of the dissolved Coalition Provisional Authority No. (57) of 2014 for other senior positions or transfer them shall be by assignment and not appointment, and the taxpayers receive the salaries and allowances of the position assigned to them...) , is contrary to the provisions of the Constitution, the decisions issued by this court in this regard, the laws in force and the relevant decisions of the Council of Ministers, which requires them to be obliged by virtue of the implementation of the Diwani order issued by the Prime Minister's Office and the ruling that paragraph (1) of the aforementioned General Secretariat letter is invalid.

In view of the foregoing, the Federal Supreme Court decided as follows:

First: Obliging the defendants to each of the first (Prime Minister) and the second (Secretary General of the Council of Ministers) in addition to their positions to implement the Diwani Order No. (195) issued by the Prime Minister's Office No. (Mim.Ra.Waw/Dal 7/20/4043) on 1/9/2020 for the plaintiff (Raed Hussein Ali), which includes ((First: Transferring the services of (Raed Hussein Ali), former Inspector General of the Ministry of Industry and Minerals, with the functional grade (Senior A) and financial allocation to the Property Claims Authority, and he lives under the title of Vice President of the Authority. Second: This order shall be implemented from the date of its issuance)).

Second: The invalidity of paragraph (1) of the letter of the General Secretariat of the Council of Ministers / Legal Department No. (Sin/2/5/40/42/3211 on 5/7/2023).

Third: to burden the defendants / being in this capacity with the expenses and fees.

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The decision has been issued unanimously, final, and binding for all authorities according to the provisions of Articles (93/3rd and 94) of the Constitution of the Republic of Iraq for 2005 and Articles (4/3rd and 5/2nd) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been edited on the session dated 10/Rabea Al-Awal/1445 Hijri coinciding 26/September/2023 AD.

Judge

Jassim Mohammed Abboud
President of the Federal Supreme Court

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