

In the name of god most gracious most merciful

Republic of Iraq
Federal supreme court
Ref. 21/federal/media/2017



Kurdish text

The Federal Supreme Court (F S C) has been convened on 6.13.2017 headed by the Judge Madhat Al-mahmood and membership of Judges Farouk Mohammed Al-sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-nagshabandi, Aboud Salih Al-temimi, Mikael Shamshon Qas Georges and Hussein Abbas Abu Altemmen who authorized in the name of the people to judge and they made the following decision:

Plaintiff / (alif.mim.heh) his agent the barrister (ha.mim.al).

- Defendants /1. The Speaker of ICR/ being in this capacity/ his agent the jurist official (heh.mim.sin).
2. Minister of transportation/ being in this capacity/ his agent the jurist (waw.jim.sin).

Claim

The agent of the plaintiff claimed that the first defendant/ being in this capacity had enacted the article (19th/1/1) civil service law number (224 for 1960) (amended) which stipulates on (the employee might be promoted to a grade that comes after his one with a condition 1. There is a vacant grade equal or exceed the job he should be promoted to) as well as he enacted article (6/2nd/alif) of state's employees' salary and the public sector number (22) for 2008 and the second defendant implemented it on his staffs, and these two texts cause fluctuation between the state's employees and unequal opportunities, whereas it gives the opportunity of promotion and acquire I higher job grade for the employee that his office has available vacant job grade fits what he needs for promotion, and inequity to his counterpart in getting the job and the period because there is no vacant job grade in the staff of his office. And that is also opens the door to unfair a lot of

beneficiaries, in pretence there is not a vacant grade which is needed for promotion, and that meaning lets the texts of the two legal articles violates the constitution clearly in its following articles (first/ equal opportunities shall be guaranteed to all Iraqis, and the state shall ensure that the necessary measures to achieve this are taken) and the challenged legal texts because of its unconstitutionality violates and conflicts this constitutional text clearly, as it cancelling the equal opportunity between the personnel of employees and for unfair reasons, whereas the state's offices can go on upgrading and promoting its employees without this condition, and they can enjoy their titles according to the aforementioned entitlement of the career and the employee after that does not need the collateral grades if it is not available, in this case the employee has took benefit from financial privileges and the title that guaranteed by the promotion in comparison with his counterparts. Second: article (19/6th) each person has the right to be treated fairly in the judicial and administrative procedures) and this text as well imposing the governmental offices and the state's institutions to not abuse or injustice with its employees and its procedures should be fair and its justice must not be obstructed with any legislation or any procedure, therefore the challenged legal texts in the case of his client it also violates and conflict article (19/6th) of the valid constitution. Third: rather the enactment to stipulate on unavailability of the vacant job is impeding reason from giving the employee who deserve promotion the financial privileges resulting from the promotion, where is considers equity, because the biggest obstacle in promotion is what follows of financial privileges, and he requested in the petition of the case to judge with voidance of clause (alif) of item (1) of article nineteenth of civil service valid law number (24 for 1960), as well as voidance of clause (alif) of item (2nd) of article (6) of state's employees salaries law and the public sector number (22) for 2008 because his client had been damaged of the challenged text, it prohibiting the client from getting his merit according the time period which the law stipulated on with borne of the defendants for all legal and advocacy fees. After registering this case at this court according to clause (3rd) of article (1) of the FSC bylaw, and after completing the required procedures in clause (2nd) of article (2) of the same bylaw and coming of the two defendants agents answer requesting to reject the case for the reasons listed in. The day 6.13.2017 was appointed as a date for reviewing the case's petition, on that day the court convened,

the agent of the plaintiff attended as well as Mr. (heh.mim) attended as an agent of the first defendant and Mr. (waw.jim) attended as an agent of the second defendant. The public in presence pleading proceeded. Both parties repeated their sayings and the court scrutinized the case. Whereas nothing left to be said, the court ended the pleading and the pronouncement of the decision recited on 6.13.2017.

The decision

After scrutiny and deliberation by the FSC. The court found that the agent of the plaintiff challenging the judgment of articles (19th/1/alif) of civil service law number (24) for 1960 and (6/2nd/alif) of state's employees salaries law and public sector number (22) for 2008 with plea that they does not meeting the opportunities equality principle for all Iraqis and that matter violates articles (16) and (19/6th) of the constitution and justice. The plaintiff litigate in this point the first defendant speaker of the ICR/ being in this capacity regarding that he represent the body enacted these two articles, and the second defendant Minister of transportation/ being in this capacity regarding that he represent the body that the plaintiff belongs to and carrying out its implementation. From scrutinizing the defends of the defendants the court found that the litigation of the second defendant has not a substantiation in the law because challenging the unconstitutionality should be directed to who enacted the law or who took its place, as for who carried out implementing of the law, he shall not be asked about its unconstitutionality, therefore the court decided to reject the case against the second defendant Minister of transportation/ being in this capacity according to provisions of article (4) of civil procedure law number (83) for 1969 which conditioned in the litigant to approve the right of his confession and obliged to do what the plaintiff requested and the Minister of transportation/ being in this capacity has not the power to cancel the two articles legislatively. As well as the court finds the articles (16) and (19/6th) of the constitution that the plaintiff rested on in his request to judge with unconstitutionality of the two articles (challenge subject), so it does not meeting the reviewed case, the staff of each governmental institution determined as its actual need of job titles and can't be exceeded because this will violates the public budget law and the table of the staffs in the government offices, also achieving of equality of opportunities principle

must be for equals in qualifications and according to principle of competition among the best of them to take the vacant job. This principle is a legislative option owned by the legislator according to the abilities of the state, and based on that the case of the plaintiff against the first defendant speaker of the ICR/ being in this capacity has no substantiation in the law. Therefore the court decided to reject the case and to burden him the expenses and advocacy fees for the agents of the defendants' amount of one hundred Iraqi dinars divided between them according to the law. The decision issued unanimously, decisively and made clear on 6.13.2017.