

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq
Federal Supreme Court
Ref.22 /Federal/Media/2014



Kurdish text

The Federal Supreme Court has been convened on 4/5/2014, 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-Nagshabndi, Abood Salih AL-Tememi, Michael Shamshon Qas Georges, and Hussein Abbas Abu Al-Temman, who authorized in the name of the people to judge and they made the following decision :

The Plaintiff: Wasit governor/ being in this capacity/ his two agents the legal officials (Wa.Ra.Mim.) and (Ghain.Kaf.Heh.)

The Defendants: commander in chief of Iraq, his agent the legal general (Kha.Jim.Alif.)

The Claim:

The plaintiff agent claimed that the commander in chief of Iraq has already issued the office order No.(451) on 2/9/2013 to transfer the General (Ha.Ain.Mim.) from the post of the acting manager of Wasit police to the ministry/ police affairs/ according to its placement.also, it appointed the general (Ra.Shin.Jim.) to do the tasks of the acting manager of Wasit police. This decision violated the Constitution. Article (78) from the constitution stipulated (()) and article (8)/5th) from the Constitution authorized the cabinet to act and according to the article (78) from the Constitution (()). The transfer of Wwasit manager from his post and replace him with another which considered as the higher position that stipulated in the article (1/8th) from the law No.(19) for 2013 the law of the second amendment for the law of governorates not related to region No.(21) in 2008 which defined the

higher positions as (director managers, managers of departments, heads of organizations in the governorate). the article (4/6th) from the aforementioned law allowed the governorate council to (accept the hiring for the higher positions in the governorate by the majority of the council members after nominating the persons by the council of the governorate). also the article (115) from the Constitution (()). Besides, the council of Wasit decided in its decision No.(6) based on the provisions of the article (7/9th) from the law of governorates not related to region No.(21) in 2008 (amended) and in his regular session No.(13) on 6/8/2013 to vote by absolute majority and in public to not approve on appointing of the general (Ra.Shin.Jim.) as the manager of Wasit police because it contradicts the competences of the council governorates which listed by the aforementioned law. For the above, the two agents of the plaintiff requested from the court to revoke the divan decision No.(451) on 2/9/2013 issued by the office of the commander in chief for violating the Constitution and the valid laws. also, Because it was issued by a competent body. The defendant agent answered the case petition by his draft on 27/2/2014 that the appointed general fo police (Ra.Shin.Jim.) was appointed as director manager of Wasit police according to the divan decision No.(451) on 2/9/2013 and the administrative decision No.16161 on 4/8/2013 issued by the ministry of interior based on the authority given to the commander in chief the prime minister the acting minister of interior based on the provisions of the administrative decision No.(12) in 1997. Especially that the previous Wasit police manager the general (Ha.Ain.) was appointed by the minister of interior in that post by proxy. There is no truth in his claim that the security bodies' heads can not be hired unless the ratification of ICR, because there are some officers who appointed by the prime minister and the police manager, is a director manager. The appointing of a director is the competence of the prime minister. Also, the council of Wasit violated the provisions of the article (7/9) from the law o the governorates not related in region No.(21)in 2008. It didn't nominate three persons to choose one of them for the post. for the above, the defendant agent requested from the court to reject the case and to burden the plaintiff all the expenses and fees of the advocacy. After the stipulated procedures were completed based on Article (2) from the FSC bylaw No.(1) in

2005, the day 27/4/214 was selected as a date for the argument but the court couldn't be convened on that day and the following is an official holiday for the election of ICR members and until 3/5/2014. So, the date of the argument is 4/5/2014 based on the provisions of Article (24) from the law of civil arguments. The plaintiff agent attended but the defendant agent didn't, although he was notified. The argument had been started presently and the plaintiff agent repeated what said in the case petition. The court checked what sad in the case petition and whereas nothing left to say, the court made the end of the argument and the decision understood publicly.

The Decision:

During scrutiny and deliberation by the FSC, it found that the office of commander in chief has already issued the divan Order No.(451) on 2/9/2013 which decided to transfer the general (Ha.Ain.Mim.) ffrom the post of Wasit police manager to the ministry of interior- police affairs- according to its placement and to appoint the general (Ra.Shin.Jim.) for the tasks of Wasit act police manager. Because the plaintiff didn't convince by this decision claiming it violated the Constitution and the valid laws, he requested to revoke the divan order and for the reasons listed in the case petition. The court found that the issued decision No.(451 on 2/9/2013) issued to treat a special and single case in which the court has not the competence to hear about it because the law of governorates not related to region No.(21) in 2008 (amended) by the Law No.(15) in 2010 determined the competences of the FSC by the law in the articles (20/3rd/2) and (31/11th/2) and there is nothing between these competences about the submitted challenge. So, the case must be rejected from the competence point and the court decided to reject the case and to burden the plaintiff all the expenses and fees of the advocacy an amount of 100000 dinars. the decision was issued based on the provisions of the article (5/2nd) from the law of the FSC No.(30) in 2003 and the article (94) from the constitution. The decision was issued unanimously and understand publicly on 4/5/2014.