

Republic of Iraq
Federal supreme court
Ref. 37/federal/2020



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 13.6.2021 headed by Judge Jasem Mohammad Abood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali who is authorized to judge in the name of the people, they made the following decision:

The Plaintiff: Basim Muhammad Ali Reda Salman, his attorney, Abbas Hashem Al-Dhahabi

The Defendant: The Minister of the Interior/ being in his capacity and his deputy, the leading lawyer, the human rights defender Jalal Izgir Abdel-Ridha.

The Claim:

The plaintiff claimed, through his attorney, that he had previously filed a complaint with the Ministry of Interior, as he was an officer in the former army with the rank of captain and with the statistical No. (5902025) and that he was a graduate of Basra University - College of Science for the year 1981-1982 and a graduate of the Second Military College (Reserve Officer College) in the session (34) of 1983, and that he was appointed after the fall of the former regime at the rank of lieutenant according to the letter issued by the Ministry of Health (6571) on 20/7/2004, and his rank was modified to a captain as it was before the

fall of the former regime according to the letter of the Ministry of Health No. (4777) on 5/7/2005 according to ministerial order No. (5957) on 28/6/2005 and that he had worked as a protection officer with the rank of captain in the Ministry of Health, and after his transfer to the Ministry of Interior with his peers, their ranks were lowered and they were considered security guards according to the Ministry of Interior letter No. (14525) on 13/4/2009 until new administrative orders were issued to install them. The plaintiff added in his claim that he was accepted into the preparatory course for those covered by Diwani Order (14) according to letter No. (15868) on 19/4/2020 issued by the Ministry of the Interior and his sequence was (1057) and then completed the course successfully after passing all the tests prior to graduation, the Ministry of the Interior issued (4115) on 2/11/2010 ordering the exclusion of him and other colleagues for being officers in the former Iraqi army, noting that paragraph (1) of the letter indicates the necessity of confirming the sequences (23,22,21,20,18) and the plaintiff's sequence was (23) as an officer of the Ministry of Interior's staff, but the letter did not work and did not see the light because of financial and administrative corruption he was returned to service on the owners of the Directorate of Protection of Karbala Facilities Protection and in the capacity of a security guard, and this matter does not do him justice because his peers have been included in promotions and the issuance of orders to confirm them on the owners of the directorates of the Ministry of the Interior, and despite the issuance of many letters issued approving his confirmation as an officer, but he did not work with them due to administrative corruption for the following reasons: 1- The Ministry of Interior's letter No. (16016) on 12/12/2009 which includes in paragraph (1), the inclusion of officers from sequence (1) to sequence (219) in the return controls on the owners of the Ministry of Interior, and its sequence was (114) and the message was not activated, although what was required from the Directorate of Protection of Karbala Facilities was sent in their letter No. (4912) on 20/10/2008 as well as the attachment of the Directorate's

letter Administration Officer No. (22911) on 2/6/2020 for the medical examination in a timely manner. 2- The letter of the Ministry of Interior / Ministry of the Department for Supporting Force Affairs Department No. (17864) on 1/12/2010 in Paragraph (2) of it, and they were requested to provide them with the administrative order for an appointment and the list of the first salary to fix and his name was within Paragraph (heh). The Ministry of Interior / Deputy Minister for Supportive Affairs sent the administration with its letter numbered 19243 to the General Directorate of Personnel- The administration lists the first salary and the order for the appointment is for re-installation, but he did not do it. 3- At the request of the Ministry of Interior / Deputy Ministry for Supportive Affairs, Department No. (17864) on 1/12/2010 of the General Directorate for the Protection of Vital Facilities, their last duties by their letter No. (37553) on 26/12/2020 and sent to them a list of the first salary for the appointment of the officer, and there was no action. 4- The letter of the General Directorate / Administration, Personnel and Return No. (21659) on 8/6/2011 and the plaintiff was informed of it by the letter of the Directorate of Protection of Holy Karbala Facilities / Administration No. (alif dad /9/2123/5421) on 16/7/2011 which includes the confirmation and return of the captain (Basim Muhammad Ali Reda) to serve on the owners of his directorate and it was not activated by the Ministry. After all these letters, which include the plaintiff, according to his claim, with the controls of return and confirmation, but that did not happen, and the plaintiff asked this court to do justice to him, like his peers who enjoy their rank, because he submitted his treatment with all his documents to the Ministry of Interior, and he was not given justice and was rejected on 15/11/2019 note that he is not covered by the Accountability and Justice Law, he has no criminal record, and he has a full-brother whose name is (Wissam). He is a political prisoner. The plaintiff adds that he has been referred to obligatory retirement as a contract because he was born in 1959 and with a pension salary of no more than three hundred thousand dinars that does

not support the livelihood and his family which has added to his suffering and injustice. The plaintiff asked this court, as he put it, to remove the injustice from him, consider his case with kindness and mercy, establish him as an officer as he is in his line of service, obtain all his rights and rank for the period of the contract, and calculate all of his canceled and unaccounted periods of service, whether during the contract period or his service in the previous army the plaintiff enclosed copies of the official books referred to above. According to the provisions of article (1/3rd) of the FAC's Bylaw No. (1) of 2005, the case was registered with this court in No. (37/federal/2020) after the legal fee was asked about it. The defendant/ being in his capacity is notified of the lawsuit petition based on Article (2/1st) of the bylaw, and on 31/3/2021, all the defendant/ being in his capacity the leading human rights lawyer (Jalal Azghair Abdul Redha) submitted an answers draft to the lawsuit petition, and the following points were included: 1- on 23/2/2006 administrative order No. (3190) was issued by the Deputy Minister for Administrative and Financial Affairs of the Ministry of Interior to return the plaintiff (Basim Mohammed Ali Al-Rida) to service and install it on the staff of the Border Guard Forces Command. 2- The plaintiff's reappointment was canceled for not joining the above leadership according to Administrative Order No. (46229) dated 24/11/2009 issued by the agency for Administrative and Financial Affairs of the Ministry of Interior. 3- on 22/1/2011 issued Administrative Order No. (2980) of Deputy Ministry for Administrative and Financial Affairs of the Ministry of Interior, according to which the appointment of (82182) members was confirmed, who were affiliated with the civil ministries as contracts, and then contracts were organized for them with the Ministry of Interior, and then they were transferred to the owners of the Ministry of Interior as (police) according to the above order and based on the provisions of Article (14) of The Service and Retirement Law of the Internal Security Forces No. (1) of 1978, amended, and (238) of them were excluded because they were outside the legal age and kept as

security guards. Contracts for the Ministry of Interior. 4- concerning the work of the plaintiff, (Basim Mohammed Ali Al-Rida), as an officer with the rank of (captain), not on the owners of the Ministry of the Interior, but it was an honorary promotion given to them for leadership, according to the Ministry of Health letter No. (6571) on 20/7/2004. 5- on 18/8/2020 issued Administrative Order No. (81177) from the Deputy Ministry for Administrative and Financial Affairs of the Ministry of Interior / Directorate of Human Resources Management / Directorate of Retirement, which includes referring the patient to mandatory retirement and in the capacity of a security guard/contract based on the provisions of Article (10/1st) of the Unified Retirement Law No. (9) of 2014 amended by Law No. (26) of 2019 article (9) from the above amendment law and when the aforementioned request of the defendant's attorney/being in his capacity, the plaintiff's lawsuit was rejected due to the absence of any injustice or negligence from any of the joints of his ministry. The defendant's attorney/ being in his capacity submitted an additional draft in which he repeated the points referred to in his first draft, and also explained that he had made a mistake in his draft dated 30/3/2021, the first and second paragraphs since the reference was made to the plaintiff's inclusion in administrative orders (3190) on 23/6/2006 and (46229) on 24/11/2009. After reviewing the aforementioned orders, it was found that he did not include them, and he asked the court to cancel them. The defendant's attorney / being in his capacity is indicated in paragraph (4) of his second illustrative draft on 4/4/2021. That through what was mentioned in the service line details and the service line model attached by the plaintiff in the lawsuit petition it was found that he was a reserve officer who was released, and he was in charge of the Ministry of Defense, and after completing all the procedures stipulated in Article (2/1st) of the Bylaw of the FSC No. (1) of 2005 and based on the provisions of Paragraph (2nd) of the same article, a date was set for the pleading in which the court has formed the agents of the parties, who are under their fundamentalist agencies, which were

confirmed in the minutes of the pleading session on 13/6/2021, repeated the agents of the parties, repeating the petition and their mutual answering drafts. They repeated their requests mentioned in those drafts, and the court also reviewed the additional and answering drafts submitted by the plaintiff's attorney in response to the additional and answering drafts submitted by the plaintiff's attorney in response to the defendant's attorney's drafts / being in his capacity, the end of pleading has been made, the case was placed under scrutiny and deliberation, and as a result, the court issued the following ruling in public:

The Decision:

After scrutiny and deliberation, It was found that the plaintiff's request in the lawsuit focused on the demand to confirm him as an officer in his regular service line, obtain all his rights, restore his service and calculate its uncalculated years, all after he challenged the defendant's procedures/ being in his capacity and the official letters issued by the Federal Ministry of Interior and the claim of unfairness and the implementation of legal procedures against him, according to the above-mentioned detail is in the explanation of the claim. It is evident from the circumstances of the lawsuit, requests, the mutual drafts, as well as the official letters and correspondences attached to the lawsuit file. Its subject is related to administrative decisions issued by the defendant's / being in his capacity, and since the law has drawn a way to challenge those decisions. Thus, the consideration of the case is outside the jurisdiction of the court stipulated in Article (93) of the Constitution and Article (4) of FSC's Law No. 30 of 2005 (amended). Therefore, the ruling decided to reject the plaintiff's lawsuit in the form of the competent authority and charged him with all judicial expenses and attorney fees for the defendant's attorney/ being in his capacity (Jalal Azghir Abd al-Ridha) amount of one hundred thousand dinars, distributed according to the legal ratios, and the decision was issued

indecisive and unanimous based on the provisions of Articles (93 & 94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4) and (5) of FSC' Law No. (30) of 2005 as amended by Law No. (25) of 2021 and had made clear public on 13/June/2021 coinciding with 26/Dhul Qi'dah/1442.

Signature of
The president
**Jasem Mohammad
Abod**

Signature of
The member
**Sameer Abbas
Mohammed**

Signature of
The member
Ghaleb Amer Shnain

Signature of
The member
Haidar Jaber Abed

Signature of
The member
Haider Ali Noory

Signature of
The member
Khalaf Ahmad Rajab

Signature of
The member
Ayoub Abbas Salih

Signature of
The member
**Abdul Rahman
Suleiman Ali**

Signature of
The member
**Diyar Muhammad
Ali**