

In the name of God most Gracious most Merciful

Republic of Iraq
Federal supreme court
Ref. 53/federal/media /2014



Kurdish text

The Federal Supreme Court (F S C) has been convened on 8.7.2014 headed by 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, 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: (sin. nun. kha. alif.) - with authority (jim).

The Defendants : 1- Minister of Defence / being in this capacity- his jurist (nun. ha. mim.).

2- President of the State Shura Council/ being in this capacity- his jurist (nun. jim. mim.).

The Claim:

The plaintiff incumbently claimed that he was of political separated returned to the military service at the rank of general and then retired on the grounds that he was sixty-seven years old, contrary to the law on the return of politically separated No. (24) of 2005 ((Transfer of political separated persons to retirement who have been returned to active service if they reach the age of sixty- eight)) contrary to law No. (25) of 2008, (the law amending the law referred to). To avoid this error, a request was made to the General Secretariat of the Ministry of Defense to cancel the retirement order and the first defendant felt that the decision to refer

him to retirement was made on the basis of the decision of the State Shura Council No. (115/2010), according to a fatwa issued by him at the request of the Ministry of Defense and since the legal rule is that (there is no jurisprudence in the text) and is not the jurisdiction of the State Shura Council amending the law and the special law restricting the common law and the text of the law on the return of politically separated came absolutely and absolutely being launched. Therefore, the Ministry of Defense refrained from promoting him despite his entitlement, as the law on the return of political separated wasted compensation from the riser of the former regime and incurred imprisonment and hardship. The Ministry of Defense had to promote him to the highest level, at the age of (63), and then to retire at the age of sixty-eight and to seal his applications in his petition: 1- Cancellation of the retirement referral order issued under Ministerial Order (895). 2- Repeal or amend the decision of the State Council No.(115/2010) in proportion to the remaining political separation in service until of the sixty-eight years of age. 3- The Minister of Defense was sentenced to promotion to the highest level legally due from 14 July 2013 with all privileges relating to that rank. The first defendant answered, requesting that the case be dismissed for the reasons described in it, because the subject matter of the case does not fall within the jurisdiction of the FSC and on the appointed day of the case the court heard the statements of the parties and after completing its investigations the conclusion of the case and issued the following decision:

The Decision:

After scrutiny and deliberation by the FSC found that the it was found that the plaintiff's requests in the petition and repeated at the hearing were 1- Cancellation of the retirement referral order issued under Ministerial Order issued by the first defendant/ being in this capacity No. (895). 2- Repeal or amend the decision of the State Council No.(115/2010) in proportion to the remaining political

separation in service until of the sixty-eight years of age. 3- The Minister of Defense was sentenced to promotion to the highest level legally due from 14 July 2013 with all privileges relating to that rank. The FSC finds that the first plaintiff's request to revoke his retirement order is one of the administrative decisions that the law has set out to challenge and outside the jurisdiction of the FSC his second request to annul or amend the decision of the State Shura Council is outside the jurisdiction of the court FSC, as well as his third request to oblige the first defendant to promote him to the highest level and grant him privileges of this rank, which also departs from the jurisdiction of the FSC as stipulated in this article (93) of the Constitution of the Republic of Iraq for 2005 and article (4) of the Law No. (30) of 2005 (FSC's Law) on the basis of the above, the decision decided to dismiss the plaintiff's case and charge him fees and the fees of the lawyers and the defendants, the jurist (nun. ha. mim.) and (nun. jim. mim.), amounted to 100,000 dinars between them a ruling on the basis of article (94) of the Constitution and the decision was issued by agreement and was publicly understood on 8/7/2014.