

Republic of Iraq
Federal Supreme Court
Ref. 54 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 9/5/2023 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, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Ghazi Mahmood Abeed – his agent the barrister Hasan Hameed Salih.

The Defendants: 1. Minister of Higher Education and Scientific Research/ being in this capacity.
2. Minister of Defense/ being in this capacity- his agent the official jurist Abdul Kareem Luaibi.

The Claim

The plaintiff claimed through his agent that he had previously been sent in September 1974 from the Ministry of Defense to (the Ukrainian city of Odesa / the former Soviet Union to study engineering at the Higher Military Academy for the Study of Engineering and Command), he graduated in June 1978 after (4) academic years according to the graduation certificate, and after graduation, he was granted the rank of lieutenant and his certificate was replaced by the Ministry of Higher Education and Scientific Research two years after secondary according to the book of the Ministry of Higher Education and Scientific Research / Department of Scholarships / Directorate of Evaluation of Certificates No. (8986 on 1/3/1981) based on Resolution No. (1) on 3/1/1979, while Article (5/2) of the instructions of the foundations of the equivalence of Arab and foreign certificates

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and degrees No. (5) for the year 1976, according to which the certificate of his study outside Iraq for not less than (3) years at the primary university, which caused him serious damage, the Ministry of Defense did not object to that evaluation and in 2009 it came to his attention that the Ministry of Higher Education and Scientific Research, during the year 2000, re-evaluated the certificates of graduates of the Yugoslav Military Engineering Academy who studied only (3) years and graduated in the early eighties, about (18) years after their graduation, therefore, he took the initiative to submit several requests to the aforementioned ministry directly and indirectly, and the result was a rejection for reasons whose conclusion was the lapse of a period of more than (36) years in addition to being currently retired, so he requested the correction of the error in evaluating his testimony from (the first defendant) based on Article (5/2) of Instructions No. (5) of 1976 or the law currently in force No. (20) of 2020, and granting him the rights resulting from correcting the evaluation and the difference in military rank like his peers, compensating him for material damages And the morale that followed him, and considering his retirement with the rank of brigadier general instead of colonel from the date of issuance of Legislative Order No. (30) on 24/9/2005 on the referral of former army personnel to retirement, granting him a salary with the rank of brigadier general from the date of the legislative order, recalculation of end-of-service gratuity, and accumulated leaves. The lawsuit was registered with this court No. (54/Federal/2023) and the legal fee was collected for it, and the defendants shall be informed of its petition and documents based on Article (21/1st and 2nd) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and for the lapse of the period stipulated in item (3rd) of the aforementioned article, a date was set to consider the case without pleading, and on the appointed day, the court was formed, and the case was heard, the court examined the requests and grounds stated in the lawsuit petition and reviewed the list of the first defendant received by this court on 25/4/2023, which includes the request to dismiss the lawsuit, as the contested decision is an administrative decision, and administrative decisions are not subject to objection or appeal except before the Supreme Administrative Court in its appeal capacity, and since the plaintiff requests the correction of the evaluation of his testimony decision, and therefore his lawsuit is subject to rejection due to the absence of the element of

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jurisdiction to establish it, based on Article (18/3rd) of the Rules of Procedure of the Federal Supreme Court and Article 2/A of the Instructions for Equivalency Principles for Arab and Foreign Certificates and Degrees No. 5 of 1976 (repealed) in force at the time the plaintiff submits an application for equivalence of his certificate, according to which his certificate was equalized by the committee for the equivalence of engineering and technological sciences certificates and was considered a high technical certificate for two years after secondary school, based on Resolution No. (1) on 3/1/1979 according to the content of the letter of the Ministry of Higher Education and Scientific Research No. (5/1/8986) dated 1/3/1981, which was unable to correct its issuance, due to the loss of the priorities of the headquarters of the Ministry of Higher Education and Scientific Research after 9/4/2003. The plaintiff did not object to the Minister within (3) months from the date of its issuance based on Article (10) of the aforementioned instructions, as it is not permissible to object after this period unless the objector submits new supporting evidence and official documents that have not been previously submitted, and the plaintiff's case cannot be measured in other cases, and the aforementioned instructions did not specify a time limit for submitting the equivalency of the certificate after its issuance by the competent university, rather, its sobriety is considered at the time of the certificate holder submitting the request for equivalence of his certificate to the Department of Missions and Cultural Relations, and the second defendant's agent responded with the reply dated 4/4/2023 requesting the dismissal of the lawsuit for lack of jurisdiction. Since the court has completed its audits, the end of the minutes has been made clear and the court issued the following judgment:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff filed a lawsuit before this court against the defendants (the first Minister of Higher Education and Scientific Research and the second the Minister of Defense) being in their capacity to demand the correction of the error in the evaluation of his testimony - which was obtained by (the first defendant / being in this capacity) - based on the provisions of Article (5/2) of Instructions No. (5) of 1976 or the currently in force Law No. (20) of 2020 and granting him the rights

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resulting from the correction of the evaluation and the difference in military rank like his peers, and to compensate him for the material and moral damage caused to him, and consider his retirement with the rank of brigadier general instead of colonel from the date of issuance of Legislative Order No. (30) On 24/9/2005 on the referral of former army personnel to retirement, granting him a salary at the rank of brigadier general from the date of the legislative order and calculating the end-of-service gratuity and accumulated leave for him as a brigadier general and not a colonel, for the reasons detailed in the lawsuit petition, the Federal Supreme Court finds that the plaintiff's lawsuit must be dismissed in form for lack of jurisdiction, as its competences and powers are limited exclusively by Articles (52 and 93) of the Constitution of the Republic of Iraq of 2005 and Article (4) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law (25) of 2021 and other special laws, and these powers and competencies did not include the jurisdiction of the Federal Supreme Court, the judgment shall be made in accordance with the plaintiff's requests, and for the foregoing, the Federal Supreme Court decided to rule as follows:

1. Dismissing the plaintiff's lawsuit Ghazi Mahmoud Obaid on grounds of lack of jurisdiction.
2. To burden the plaintiff shall charge the expenses, fees, and advocacy fees of the defendants' agents, being in their capacity, the human rights employee Ahmed Jaafar Shawi and the official jurist employee Abdul Karim Luaibi Abed, an amount of (one hundred thousand) dinars distributed in accordance with the law, The decision has been issued unanimously, final, and binding for all authorities according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 and 5) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been edited in the session dated 18/Shawwal/1444 Hijri coinciding with 9/May/2023 AD.

Judge
Jassim Mohammed Abbood
President of the Federal Supreme Court

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