

Republic of Iraq
Federal Supreme Court
Ref. 57 / federal / media / 2014



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 18.11.2014 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen and Ade Hatif Jabar whom are authorized in the name of the people to judge, they made the following decision:

The plaintiff:

Doctor (ain.ain.sin.) minister of science and technology-being in this post/ his agent the official (zin. Kaf. Kaf.).

The defendant:

The Speaker of the Iraqi council of representatives (I.C.R.)/ being in this post – his agents the legal officials (heh. mim. sin.) and (Sin. ta. yeh.).

The claim:

The agent of the plaintiff claimed that the I.C.R. on 4.2.2014 has approved the unified pension law, then get published in the Iraqi gazette and become in-force on 1.1.2014, article (35/5th) of the law no.(9) for 2014 included exception of whom are covered with the university service law from the provisions of article (21), calculating their pension salary on the base of pension salary with percentage of (80%) of last salary and allocations he received in

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service when refer to retirement, but not to exceed (200%) of the salary. The law granted degree allocation amount of (15-20%) of the pension salary for the holder of high level degree (master- high diploma – doctorate) whom are not covered with the law of university service, the plaintiff agent cleared that listing paragraph 5th of article (35) contradicts the law objectives that aim to achieve decent life, fair equation, and insure distributing the income, not to discriminate between the owner of high level degree who work in the state ministries and who work in the ministry of high education, the discrimination is shown in the salary when refer to retirement, this discrimination will leads to emptying the state departments of the higher education people for the privilege in the university service so they don't want to appointed in these ministries as long as they don't enjoy the same privilege granted for whom is employed in the ministry of high education. Article (14) of the constitution stated the equality without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, but the text of the challenged paragraph 5th stated this discrimination between the people with high degree, the plaintiff agent requested to call upon the defendant being in this post and to repeal article (35/5th) of the unified pension law no.(9) for 2014 and to return the pension law to the I.C.R. to add paragraph in article (35) to include all the holder of high degree in the state ministries to calculate their pension salary on the base of (80%) of the nominal salary with the allocations before referring to retirement but not to exceed (200%) of the pension salary. The defendant was informed with the case petition, he responded with the answering draft dated on 4.5.12014 stating that there is conflict between article (35/5th) with second part of the law, and the court

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lack the jurisdiction in it, also the differentiation in the pension salary between the workers in the ministry of high education with other ministries which will leads to migration of the brains is not of the F.S.C. jurisdictions as it is not of the constitutional conflicts, there is another way to treat it by the legal amendment, as for this discrepancy in the pension salary between the high degree holders violating the principle stipulated in article (14) of the constitution this claim is rejected, he requested to dismiss the lawsuit. The court call upon the parties, the plaintiff agent repeated the case petition limiting her request to the including of the high degree holder by the same allocations of the university service employee, requesting to amend article (35/5th) of the unified pension law no.(9) for 2014. The defendant agents replay that this is out of the F.S.C. jurisdiction. the court found that the case is complete for reasons of judgment then decided to close the argument and issued the following decision.

The decision:

During scrutiny and deliberation by the F.S.C. the court found that the plaintiff initiated the lawsuit as the minister of science and technology being in this post as a high degree holder (Phd) now he is out of the ministerial formation by the ending of the ministry duties. He requested in his case to repeal paragraph (5th) of article (35) of the unified pension law no.(9) for 2014, and to return the law to the I.C.R. to add paragraph to article (35) to include all the holder of high degree in the state ministries to calculate their pension salary on the base of (80%) of the nominal salary with the allocations

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before referring to retirement but not to exceed (200%) of the pension salary, as article (35/5th) excepted whom are covered with the university service law or his descendant from the pension law by granting him the salary with the stipulated allocations in the law. As the plaintiff agent limited the request to the including of the high degree holder by the same allocations of the university service employee, requesting to amend article (35/5th) of the unified pension law, which means that she dismissed the request of repealing paragraph 5th of article (35) therefore the court decided to revoke the case petition regard first request, as for her second request to the including of the high degree holder by the same allocations of the university service employee, and to amend article (35/5th) of the unified pension law no.(9) for 2014, this request required legislative interference which is out of the F.S.C. jurisdictions, as it is competent of the I.C.R. accordingly the court dismissed the plaintiff case and to burden him the expenses and the advocacy fees for the defendant' agents amount of (one hundred thousand) IQ.D. This decision has been issued unanimously and publicly on 18/11/2014.