

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq  
Federal Supreme Court  
Ref.91 /federal/media/2016



Kurdish text

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The Federal Supreme Court has been convened on 7/2/2017, 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: (Mim.Jim.Ra) his two agents the barristers (Kha.Ha.Ain) and (Mim.Nun.Teh)

The Defendants:

- 1- the prime minister/ being in this capacity- his agent the assistant legal counselor (Ha.Ain.Jim).
- 2- the secretary-general of the cabinet/ being in this capacity- his decision No.(Mim.Ha/32/131/18615) on (28/12/2005).

The Claim:

The two agents of the plaintiff claimed that their client (the plaintiff) (Mim.Jim.Ra) and he is Admiral, he has already been referred to the retirement according to the decision of the civil governor of the temporary union power in Iraq which included the dissolving of all Iraqi army, but the relation of his client to the Iraqi army had been ended on (16/6/1998) which mean before five years of service. He initiated to challenge the decision before the FSC because he was not convinced by the mentioned decision for its violation of the Constitution and the law for the following reasons:

The law of the service and retirement and the valid law of penal in Iraq since the royal period and until (9/4/2003), it obliged the military persons who are between (18-63) years to subject to the obliged and reserve military service, and the offender was faced to the toughest military penalties, and when the Iraqi army was dissolved the plaintiff was doing the reserve service as a colonel within ( AL-Nakhwa force). Also, the agents of the plaintiff claimed that their client was not a Baathist and was not a follower of the ex-regime, the evidence he didn't get any medal of honor also he is not included within Baath extraction, he is one of the system's victims considering that the Lieutenant Colonel (Ain.Ra.Nun) who was executed by Saddam and he is his cousin, whereas he was chased for the mentioned reason. The two agents of the plaintiff also claimed that their client was returned to the service on (18/10/2010) as a Major General according to the decision of the fired verification commission by the decision of the divan (2735/2010) on 22/2/2010, and the reserved service in ( AL-Nakhwa army) was not considered for retirement matters, and according to the letter of the ministry of defence/ the legal counselor (19/31/748/4888) on 8/3/2013, the period that the officers spent in the department of (AL-Nakhwa trainers) was counted from 16/6/1998 to 9/4/2003, and it was recycled to their present rank, as long as it was not counted then and they didn't get benefit from it when their seniority was counted. Some officers got benefit from that decision but nit the plaintiff, as well as they, made clear that neither the Constitution nor the considered laws have anything that prevents the employee or the retired from got a benefit from his legal and financial rights. For the above, they requested from the court to decide the unconstitutionality of the issued decision by the defendants/ being in their capacities- by counting the reserved service according to the law of military service and retirement that valid by then for the period from 16/6/1998 to 9/4/2003, which is five years that is added to his previous service which began from 17/11/1965 to 9/4/2003. The agent of the first defendant/ being in this capacity- answered on the case petition by his draft No.(Qaf/2/2/68/3631) which dated on (13/12/2016) which a copy of it is attached by the case file from three points, litigation, formality, Objectivity. From the litigation point, the secretary-general of the cabinet doesn't have a legal entity so the litigation is not

realized. From the formality point, the competences of the FSC that were stipulated in the article (93) from the constitution and the article (4/1<sup>st</sup> and 2<sup>nd</sup>) from its law No.(30) for 2005, and it is incompetent to try the decision issued by his client and its effects also there is no clear indication for the challenged decision in the case petition. From the Objectivity point the temporary union power in Iraq dissolved Iraq army and the military regulations according to the clause (5) from its order No.(2) for 2003 and it didn't except (AL-Nakhwa forces) from it, and it didn't decide to add their service to the previous military service and the subject of counting the service of the members of the previous Iraq army and the dissolved entities, it has been decided according to the article (21/10<sup>th</sup>/Alif) from the unified law of retirement no.(9) for 2014 (amended) by adding the retirement's services to those who have a retirement service which is not less than 15 years according to the valid legislation on its dissolving date, and the decision of the dissolved council of revolution leading No.(36) for 19998 include the counting of the service of the returner to the service. For the above, the agent of the first defendant requested from the court to reject the case from the formality, litigation, and incompetence point, and to reject the case from objectivity point in case it was not rejected from formality point. For the aforementioned in his answering draft. After the case had been registered at his court according to the clause (3<sup>rd</sup>) from the article (1) of the bylaw of the FSC No.(1) for 2005, and the required procedures were completed according to the clause (2<sup>nd</sup>) from the article (2) from the aforementioned regulation. The day 7/2/2017 had been appointed as a date for the argument and on 5/2/2017 the two agents of the plaintiff presented an explanatory draft which listed that the secretary-general of the cabinet/ being in this capacity- has a legal entity and the sayings of the agent of the first defendant in this matter are not right, because the latter belongs to the cabinet ( the responsibility of the follower about the works of the followed). Also, the FSC is competent to try this case according to the clause (3) from the article (93) from the Constitution. The two agents of the plaintiff repeated what listed in the case petition and requested from the court to decide according to it. On the selected day for the argument, the court had been convened and the agent of the plaintiff, the agent of the first and second defendant attended,

so the argument was begun publicly and presently. The plaintiff's agent repeated what was listed in the case petition and requested from the court to decide according to it, with consideration to what was listed in the explanatory draft that dated on (5/2/2017). The agent of the defendants answered that they repeated what was listed in the answering draft and request from the court to reject the case for the reasons which were listed in it. The two parties repeated their sayings, and whereas nothing left to say the end of the argument had been understood and the decision was understood publicly.

The decision:

During the scrutiny and deliberation by the FSC, the court found that the plaintiff's agent claimed that his client (Maajid Jameel Rasheed) and he is Admiral, he has already been referred to the retirement according to the decision of the civil governor of the temporary union power in Iraq which included the dissolving of all Iraqi army, but the relation of his client to the Iraqi army had been ended on (16/6/1998) which mean before five years of service. He initiated to challenge the decision before the FSC because he was not convinced by the mentioned decision for its violation of the Constitution and the law. The FSC finds that the challenged decision has determined a body to challenged it which is not the FSC. Also, the FSc finds that the second defendant (the secretary-general of the cabinet) cant be a litigant in this case because of the article (4) from the law of the civil arguments No.(83) for 1969 (amended) which has defined the litigant(the defendant must be a litigant whose admission leads to judgment if an admission issued by him, and also he must be convicted or obliged by something if the case was approved), while the challenged decision was issued by the cabinet and the real litigant in the case is the prime minister/ being in this capacity, and the task of the secretary-general is to notify the concerned bodies by the decision so the litigation is void, because the litigation must be directed to the one who issued the decision, not who notified him. In addition to this, he doesn't have a legal entity which gives him the ability to dispute. Based on this, the FSC decided to reject the case formality from the competence point whereas the trying of the case subject is out of the FSC competences

which were determined by the Constitution in the article (93) and the article (4) from the law of the court (30) for 2005, and from the litigation point as for the second defendant, and to burden the plaintiff all the expenses and fees of the advocacy for the two agents of the defendants amount of hundred thousand dinar divided between them equally. The decision had been issued according to the provisions of the article (94) from the constitution and the article (5/2<sup>nd</sup>) from the law of the FSC no.9300 for 2005 unanimously and was understood publicly on 7/2/2017.