

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 98/federal/2019



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 12/11/2019 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen who are authorized in the name of the people to judge and they made the following decision:

The plaintiff: The attorney Harith Abd Alkaliq Yasien.

The defendants:

- 1- The minister of finance/ being in this post
- 2- The president of the jsnational pension committee/ being in this post

} Their agent the legal official Shatha Ashoor Alwaan

The claim:

The agent of the plaintiff claimed that the retirement cases audit council has issued decisions leads to deprive the resigned of the job serves that have less than (15) years of serves which is represented by the pension award the alternative of the stipulated pension salary in article (13) and (22/1st/A) of the unified pension law No.(9) for

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2014 under the claim that the award is granted for the retired employee and not for the resigned one without legal substantiation, the plaintiff sees that the pension law has covered the categories of resigned, dismissed, the service dropout, and the isolated with its provisions unlike the former unified pension law, as the retirement cases audit council has issued its decision No.(787) on 14/11/2017 which ruled that (Abeer Shaker) is not covered with article (22/1st/A) of the unified pension law No.(9) for 2014, the alternative, as it doesn't have legal substantiation of the law because it is granted for the retired employee and not for the resigned one, and her current status is resigned and not employee, according to that the plaintiff request to judge to repeal the decision of the mentioned retirement cases audit council and to compile the defendants to expend the implications right of the whom are covered with it. After the informing of the defendants, the second defendant has answered with the answering draft dated on 25/9/2019 which included his defense and the request to reject the case from the aspect of jurisdiction including that the retirement cases audit council' decision is submitted to challenge before the federal cassation court within (60) days of the date of informing, and the decision of the cassation court is final according to clause (3rd) of article (30) of the pension law, as the decision the subject of the lawsuit has deplete

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the mentioned challenge methods. After completing the required procedures according to the F.S.C. Bylaw the date 22/11/2019 was scheduled for the argument the court convened the attorney Harith Abd Alkaliq has attended as a plaintiff in this lawsuit, the agent of the defendants the minister of finance and the head of the national pension committee/ being in this post and continue with the argument in presence and public, the plaintiff repeated the case petition and requested to judge according to it and commented that he based in his claim on article (93) of the constitution, the agent of the defendants requested to reject the case from the point of jurisdiction as it subject consideration is a jurisdiction of the formed committees in the national pension committee and the decisions issued by these committees of special character and the federal cassation court is authorized to consider it, the plaintiff approved that what the defendants agent stated is right and commented that what she stated is right but the decision of the national pension committee is affected by flaws and is violating the pension committee law, and that the deprivation of the resigned from the alternative of the pension salary is violation to law. During scrutiny the court found that the case is completed for reasons of judgment, the argument is closed and the decision is issued publicly.

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The decision:

During scrutiny and deliberation by the F.S.C. the court found that the plaintiff has requested in his case petition to judge the repeal of the retirement cases audit council' decision which rule to deprive the resigned employee who have serves less than (15) years of the pension allowance and to compile the defendants/ being in this post to expend the mentioned rights of whom are covered with it. The F.S.C. finds that the law has set the path to challenge the decision of the retirement cases audit council which is other than the path that the plaintiff has followed when challenged the decision before the F.S.C. as it jurisdictions are listed in article (93) of the constitution and article (4) of it law therefore the plaintiff's case is binding to be rejected from the point of jurisdiction No.(30) for 2005. Therefore the court decided to reject it and to burden him the expenses and the advocacy fees for the agent of the defendants amount of (one hundred thousand Iraqi dinars). The decision has been issued unanimously and final on 12/11/2019.

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