The Legal Situates For Professors of Private Universities

DR .Saba Noaman Rasheed
Dr.saba@colaw.uobaghdad.edu.iq
legal. situates . Privet .university

المركز القانوني لأساتذة الكليات الاهلية

أ.م.د.صبا نعمان رشيد

الخلاصة

ان استحصال حقوق العامل اضحت اسهل استحصالا وان كانت عن طريق التخاصم القضائي و ما يتبقى في ذلك هو تطلب ائبات ان علاقة بين الطرفين هي (علاقة عمل) , مما يستدعي في حالات المخالفة اللجؤ الى الاحكام العامة لتفسير العلاقة بالعودة (الى قانوني العمل و المدني) و القواعد الاخص في حالات مثل تشغيل حملة الشهادات العليا في كيات تعمل وفق نظم خاصة مستقلة تابعة للدولة بالرقابة و للمؤسسات الخاصة تمويلا و ادارة و التي يحكم عملها قانون مستقل ينفرد عن الجامعات و المؤسسات الحكومية و ان كان يتعشق مع القوانين العامة في حقوق العاملين لديها و في الاهداف المتمثلة بالتعليم و اعدد فئات متخصصة في مجالات متعددة و نشر الثقافة , و لذلك تتلخص مشكلة البحث في تبيان ماهية الاحكام العامة لعد الشخص (الممارس لمهنة التدريس) عاملا وفق القواعد العامة ام لا , و من ثم استخدام منهجية المطابقة بين احكام الشكل المتخصص وفق قانوني التعليم الاهلي و الخدمة المدنية و احكامهما و التطبيق الحالي للقضاء بمخالفة المتعارف عليه.

Summary

Obtaining the rights of the worker has become easier to obtain, even if it is through judicial litigation, and what remains in that is a request that proves that a relationship between the two parties is (a work relationship), which requires in cases of violation to resort to general provisions to interpret the relationship by returning (to the labor and civil laws). And the rules especially in cases such as the employment of holders of postgraduate degrees in colleges that operate according to special, independent systems affiliated with the state in oversight and for private institutions in financing and management, and whose work is governed by an independent law that is unique to universities and government institutions, even if it is intertwined with general laws in the rights of its workers and In the goals represented by education and the number of specialized categories in various fields and the dissemination of culture, and therefore the research

problem is summarized in clarifying what the general provisions are for counting the person (practitioner of the teaching profession) as a worker according to the general rules or not, and then using the matching methodology between the provisions of the specialized form according to The laws of private education and civil service and their provisions and the current application of the judiciary in violation of what is customary.

Introduction

The regulation of the work relationship in public (and certainly private) legislation is one of the modern rules in comparison to other closed societies emerging among the members of societies, which some of the jurists return to the philosophy of individual freedom that prevailed in many legislations during the French Revolution and the spread of its ideas (where the economic leader spoke Freedom is a natural system to which work is subject as well as other elements of production). The preference for keeping it in a consensual manner, while it appeared clearly and early on organizing the work of employees and their relations with the administration and giving them broad powers, and despite that, the regulation of labor legislation was an imposed reality despite the previous ideas because of the (weakness in legal equality) that was not based on it. To economic equality with the absence of support from the competent authorities, and the existence of a legislating base, leading to a peremptory norm that must be applied according to the progress of socialist-social ideas and the spread of the spirit of social , and if The idea of public order in accordance with the traditional principles of both administrative law and civil law imposes the discourse of the legal base related to it on the concerned parties, so that neither of them can deviate from it in order to preserve the fundamental interest of the group. It is in return! The labor law is of a protective nature, especially what is attached to it (the minimum rights included) is nullified with regard to the waiver of the rights in the minimum imposed by the employer,) Unless the conflicting agreement includes an increase in rights, such as an increase in wages beyond the limit stipulated by legislation or an agreement between the worker and the employer(. especially what relates to the material rights of the worker represented in the agreed wage and the associated status An end to him by the competent authorities and the method of protecting him from cutting and losing after him the source of livelihood of the worker and his family, and the stability of these rules in application in the modern state, the

obtaining of the rights of the worker has become easier to obtain, even if it is through judicial litigation, and what remains in that is the demand for damages. The relationship between the two parties is (working relationship), which requires in cases of violation resorting to the general provisions to explain the relationship by returning (to the labor and civil laws) and the special rules in cases such as the operation of the postgraduate degree in institutions that operate according to special independent systems affiliated to the state with oversight and Private institutions are funded and managed, and whose work is governed by an independent law that is distinct from universities and government institutions, even if it is intertwined with general laws regarding the rights of their employees and the goals represented by education and the number of specialized categories in the fields of Multiplicity and dissemination of culture) Article (10) Private Higher Education Law No. 25 of 2016 (, as we must clarify what are the general provisions for counting a person (the practitioner of the teaching profession) as a worker according to the general rules, and then in a specialized manner in accordance with the laws of private education and civil service and their provision (With regard secondment of an employee teach in private colleges

The first topic - the legal regulation of the work relationship in accordance with Labor Law No. (37) of 2015

Relationships arising from economic activity occupy a prominent place in the legal system in general, and their role becomes more prominent if these relations revolve around the human activity of economic work, especially if the work is subordinate) Article 93 Labor Law No. 37 of 2015.(, carried out at the expense of the one who takes the initiative and organization, so the worker is subject to his supervision and management, so that we can fully realize The legal system of the wage-dependent labor relationship, which is subject to legal rules, most of which are strict in application to distinguish it from other humanitarian and economic work, especially what is independent

The first requirement - the legal description of the parties to the business relationship

The law is applicable to whoever fits the description of (worker) except that he performs work with a wage and with legal subordination as a basic rule (except for irregular workers), then its provisions regarding the basic principles and of course the objectives of work enforcement No. (37) of 2015 will be applied around them) Article 103 Labor Law No. 37 of 2015.(.

Section one - legal description of the worker

The worker (every natural person, whether male or female, who works under the guidance and supervision of the employer and under his management, whether he works under a written or oral contract, express or implied, or by way of training or testing, or performs intellectual or physical work in return for a wage of any kind . For the year 43AD, session 4/3/1980, the work contract is one of the consensual contracts, which requires that the determination of the wage be by agreement of the two parties and may not be modified except with their consent,) Appeal No. 180 of the year 44 BC, session 9/3/1980, Hasan Al-Fakhani, Part IV, Judiciary Cassation in labor and social security disputes 1981(In the sense that a person is a worker, he must be natural, meaning that there is no room here to treat the work of machines, and whether he is male or female, but it is stipulated that:

A- Perform an action.

b- Under the supervision and direction of the employer and its management.

c- *For a fee of any kind.*

d- With a written or oral contract, express or implied, and whoever works for the purposes of training or testing, and whatever type of work performed, falls within the scope of this definition. It is noted that the law has made general and special exceptions:

General Exceptions: Labor Law No. 37 of 2015 is applicable to all workers in Iraq in accordance with Article 3 thereof, in application of the principle of territoriality and concepts in their judgment, with the exception of:

a- Relevant public officials in accordance with the Civil Service Law or a special provision.

B - Members of the armed forces, police and internal security personnel.

Exceptions related to working time: The following workers are excluded from the provisions of regulating working hours in accordance with Article 67, because the nature of their work requires working more or more hours than the specified time and to leave their determination to be regulated by instructions issued by the Minister of Labor:

A- Projects in which only members of the employer's family work.

b- Persons occupying supervisory and management positions.

C - Persons employed in work that requires confidentiality.

d- Workers who carry out preparatory or supplementary work that is performed outside the established limits of the working hours in the project.

C - guard workers.

H - Delegates to carry out work outside their projects.

G - agricultural workers.

Exceptions to the regulation (work of working women): Those who work in a family environment in which only family members work under the management and supervision of the husband, father, mother or brother (1/Seventh) Labor Law No. (37) of 2015 (Guaranteed Worker) Every person who works in a collective or individual work project or in the (unorganized work) sector and pays the amount of the guarantee contribution to be paid to a retirement fund (workers guarantee in return for any of the guarantees or Services, compensation, rewards, or salaries provided by the Fund to the insured worker).Exceptions for organizing (juvenile work): Those over 15 years of age who work in a family environment under the management and supervision of their husband, father, mother or brother, which succeed for local consumption and do not employ wage workers (See the legal conditions for the form of the worker in accordance with Article (1 / VI) Labor Law No. (37) of 2015 as a

condition for the application of the Security Law (performance of work, legal subordination, contract, wages).

Section Two - The Employer

The employer, as defined in Article 1/Eighth, as: Every natural or legal person who employs one or more workers in return for a wage of any kind.The law in force did not require that the business owner be in the private, cooperative or mixed sectors in order to include contract holders in state departments, nor did it stipulate that the business owner aims for profit. Thus, associations and scientific, cultural, humanitarian, sports and political bodies are included within the idea of the business owner for those who do By employing them by persons under their supervision and direction, provided that this is in return for a wage, and the law did not require the employer to professionalize the work he manages, and as it became clear from the definition, he can be a natural (human) or legal person (a company or institution

Section Three - Work performed in accordance with the applicable labor law

Work and its types:

As the regulation of the labor law revolves around the relationship between the worker and the employer in order to perform paid work, the law in force came with a definition of work and its types.

1. Definition of work:

According to Article 1/Fifth, Labor Law No. 37 of 2015 defines it as: Every human, intellectual or physical effort made by the worker, whether it is permanent, occasional, temporary, partial or seasonal.

Thus, it falls within the scope of the application of the law (humanitarian work) only, and whether the worker performs it intellectually (such as arithmetic work) or physically (such as construction and pregnancy), and whether he performs it to the degree of professionalism and was specialized in it and performs it permanently, or is it an accidental work that he performs temporarily, part-time or in Certain times are seasonal, such as harvest times.

2. Types of business:

According to the definition of Article 1 of the new Labor Law No. 37 of 2015, there are the following types of work:

a. Temporary work: It is the work required by the nature of its implementation and completion for a specified period.

B. Casual work: work that is called for by urgent necessities and does not fall within its nature in the activity practiced by the employer, and the period of its completion does not exceed (6) months.

c. Part-time work: The work that is performed in working hours that are less than the normal daily working hours stipulated in the law, whether the work is performed on a daily basis or for some days of the week.

Thus, temporary work is included in the activity of the project, but it is for the purpose of (executing) a specific work only, and thus it takes a specific period for completion, such as construction or repair work, or for the purpose of producing a commodity for a specific season.

As for the accidental work, it is only (for emergency purposes), i.e. for unexpected developments on the project, and it also does not fall within the project's activity. The legislator has set a maximum period of six months for its occasional count.

As for the part-time work, it differs (in the hours of work performance) for the worker, so it is less than the hours that the worker performs (full-time), or it may be for specific days per week only, and the worker's wages are calculated on the basis of the week, or if he works for twenty hours per month, for example, he is paid for half the period and then paid for half the period and then Pay the rest again.

Section IV - Employment Contract

In Article 900/1, the Iraqi Civil Code defines an individual work contract as: a contract by which one of the parties undertakes to allocate his work to serve the other party, and in performing it under his direction and management, in return for a wage pledged by the other party, the worker is a special wage. As defined by the Iraqi legislator in Article 1/Ninth Labor Law No. 37 of 2015 as: ((any agreement, whether explicit or implicit, oral

or written, according to which the worker works or provides a service under the management and supervision of the employer in return for a wage of any kind)). The two definitions agree that they are an agreement to perform paid work and under the management of the person who will benefit from his services, noting the difference that the civil law that mentioned the title (Private Employer) was affected by the Code of Judicial Provisions, which makes it self-exclusive in the sense that it is permissible to work for more than one employer and it is permissible for him to work for a specific time Thus, it is possible to have multiple work relationships in which one of the parties is a single worker, whenever the elements of the work contract that we will mention later are available in each of them. We conclude from the definition provided by the law for this contract that it has three elements, namely:

1. Work element: The legislator in the applicable law has defined work in Article (1) as: Every human intellectual or physical effort exerted by the worker in return for a wage, whether it is permanent, occasional, temporary or seasonal.

Thus, it includes within its concept everything that a person makes in return for a wage, so it is deducted from the effort that is made by any being other than the human being, and also comes out the effort that a person performs without wages, and the two parties agree to work, even if it is not binding on this agreement, but it can extract the profession of the worker and the conditions of the contract.

2. Pay element: This element is considered fulfilled when the worker receives compensation for the work he performs for the employer according to what the legislator indicates, whether it is (cash) or (in kind) of any kind. This is achieved so that the performance of the work was free of charge, a number of donation contracts, thus deriving it from the meaning of the work contract, and we point out that this element may be achieved despite not expressly consenting to determining the amount of wages or indicating an accounting method in the work contract.
Which is what is meant by (economic dependence) of the person to whom the work leads, and this is achieved when two pillars are fulfilled. The first - dependence on the worker's livelihood on his wages, which he prepares as the main or only resource for his livelihood. What he receives from the wages for his work.

3. legal subordination component (Dr. Mahmoud Gamal El-Din Zaki, Employment Contract in the Egyptian Labor Law, Egypt,):It is the criterion for the application of the Labor Law, as to determine whether the contract is subject to the provisions of the Labor Law from other laws, foremost of which is the Civil Code, the worker must be in a position of subjection to the employer, by receiving orders from the employer, whether individual or collective, in writing and subjecting him to penalty in The case of negligence and negligence, and thus the contracts that come to work and in which the worker is not under the supervision and direction of the employer, are excluded from the scope of the application of the labor law, and it is clear that it is an essential element for the application of the labor law by stipulating that the worker is (under the management and supervision of the employer) in the definition of a contract Work according to the text of Article 1 / IX, and legal subordination may be technical (complete), where the worker is subject to complete management and direction by the employer in all minutes and parts of the work, and it may be administrative subordination (incomplete) limited to the employer's supervision of the external conditions of work such as determining the place, time and division of work Contemporary jurisprudence suffices with this kind of dependency on the enforcement of the labor law, so the contracts in which doctors, engineers, actors, and musicians are bound by work contracts with employers are considered. They have only administrative oversight, not technical, and it may be an organizational dependency when the business owner owns more than one project, so he cannot be present in all the sites at the same time, so the workers in all projects follow his orders through someone who represents him or appoints him to deliver them.

The second requirement - the rights associated with the legal description of the worker The applicability of the characterization of the person performing the work as the worker is legally linked to rights that are obtained according to a special law. Rather, it is linked to the first labor law, which is this retirement and social security law, on the one hand, and on the other hand, the determination of the party that is judicially sought to obtain rights, which is the judiciary of work.

Section one - rights accruing to the worker according to the social security system

The failure to achieve the legal protection required for workers by the existing legal system was one of the factors that prompted the establishment of protection systems (social security) and the approval of benefits after long suffering for workers from the ill effects of unsecured work. Social security systems play an active role in protecting human beings in societies (especially The category of workers) and as it contributes to the development of multiple areas of life through the effectiveness of its benefits and its impact on general economic and social development, it is considered according to the most advanced systems of social protection programs (the Welfare Summit), while it is considered as a safety valve in developing countries (including the Arab countries) It is also a social capacity based on equality and justice.

However, if the enjoyment of it is basic based on the availability of the conditions of application and coverage, he looks forward to the required protection, which is often limited to countries where the security systems range in specific places according to nearly half a century, such as Iraq, where the scope of coverage generally requires the availability of legal status after the person is a factor, which means The application of the labor law in force against him a The retirement salary is distributed according to the provisions of Articles (72, 74, 75, and 76) if the successor's retirement is due to death, but if the retirement is due to the death of a worker who receives an old-age pension, then the retirement salaries are distributed in the same proportions,) but according to the provisions of Articles (65, 107) of the Retirement Law Social Security No. (39) of 1971(.nd despite the attempt of the law in force to expand the umbrella of protection, the acceptance of workers in the informal sector in the future of social security programs (It is noted that this law was considered a leap in the development of legislation in all its features, because: A- It included all workers in the country (then looking at all workers from the perspective of a single class, then it was imposed on them to pay contributions on the basis of a specific percentage of contributions in accordance with Article 27-a) By 12% of the wage apportionment among employers except for those who are excluded from the provisions of Articles One and Two of Law (11) of 1964, as amended, to be distributed as follows: 1% for the health insurance branch,

2% for the work injury insurance branch, 9% for the retirement security branch, and 25% of the wages on Employers in the private and mixed sectors, and this proportion is distributed to the health insurance branch 3%, to the work injury insurance 3%, to retirement 15% and 4% to the services insurance branch. Subscriptions to its workers for all branches of insurance, except for the retirement branch, whose conditions are the commitment of the administration towards its workers to provide the insurance services from which it was exempted by subscription without charging the workers any compensation for that.

- In terms of workers, the Security Law is applied to all workers covered by the provisions of the Labor Law and the various work sectors according to the following gradual chronology: It is applied as of the first of April of 1971 and for those who were covered by the previous Security Law No. (12) of 1969, and it applies to the rest of the workers Successively and in stages, and by republican decrees issued upon the proposal of the Minister and the punishment of the Board of Directors. The actual application of this law must be covered by all workers covered by its provisions, or the period has been specified to five years and to increase after that to another two years in accordance with the provisions of Article (3/5) of the Retirement Law and social security.

- On May 19, 2007, legislation was issued to amend the text of Article Three of the same law to include all Iraqi workers by stipulating that (the provisions of this law apply to workers covered by the provisions of Labor Law No. The inclusion of all workers working in the private, mixed and cooperative sectors (regardless of their number). As for the exception to the inclusion under the umbrella of this law, where paragraph (a) of Article Three of the provisions of inclusion stipulated in the Retirement and Social Security Law No. (12) of 1969 the previous rate in force and those who The provisions of the exception were transferred to include all workers and trainees, except for the following categories:

- Government employees covered by retirement laws, foreign experts employed by the state under contracts, who work for their spouses, fathers, daughters or sons.

- Employed in casual, emergency, temporary or seasonal work, or covered by a special provision.

- Foreign nationals who work for foreign institutions whose main center is outside Iraq and who are covered by retirement and social security systems in their home countries.

Domestic servants and the like.

- Workers in agriculture, livestock and forestry, except those employed by the government.

People who work in their homes for the employer.

- Those covered by special pension laws and regulations, the government contributes to financing funds.

This law in force was characterized by expanding the scope of coverage in terms of location, as it crossed the borders of Iraq to include Iraqi workers working abroad by including them in the retirement branch (to include exclusively the states of Kuwait and Saudi Arabia, according to the dissolved Revolutionary Command Council Resolution No. (996) issued on March 17, 1976). Subject to the following conditions:

- The Iraqi worker from Kuwait does not receive a pension if he is originally a worker or a retired employee covered by a retirement in Iraq. Does not Kuwait or Saudi Arabia pay him a pension under any circumstances (end of service, disability, old age, or death). workers outside their country.

- It is noted that the system of inclusion under the umbrella of the Retirement and Social Security Law remained (limited) until the entry into force of Law No. (39) of 1971 to decide the following changes:

- Report the full coverage of workers according to a chronological progression.

- For the first time in Iraq, it has become a real system of insurance from an objective point of view in cases - (illness, childbirth, services), while in the past the coverage under the umbrella of protection did not exceed the idea of (financial subsidies).

- Under the law in force, the measure of entitlement to compensation, reward or salary is no longer what the worker has saved during his ability to work, but has become the essential basis for it (the existence of the actual need for social protection). The alliance is asked about what it paid, so they have to contribute as a contribution to the guarantee department to give them the retirement salary.

(The reasons for issuing the Retirement and Social Security Law for Workers No. (39) of 1971). However, the worker's entitlement remains one of the legally established benefits after the inclusion, secondly, with the availability of the foregoing conditions, and there has been a dispute about the nature of any of the (remunerations and compensations) listed under the title of benefits and their nature in the various systems in general.

Section One - Benefits according to the Workers' Retirement and Social Security Law No. (39) of 1971

Where the risks to which the insured and the insured worker may be exposed) are complicated by their multiple sources, but they are linked to each other in terms of the consequences of affecting his economic position. In kind and cash, whether its causes are practicing a profession and facing its risks, such as work injuries, occupational diseases, road injuries, or (even unemployment) or their sources are of social causes (such as ordinary illness, disability, death, old age that prevents work and old age), which requires the care of the person covered by the protection umbrella by obtaining it For the benefits arising from the applicable legislation, the beneficiary of social security, regardless of his rank in the project, the role he plays in it, or his professional affiliation in it, only fulfills his rights based on two pillars. Whether it is exceptional or usual in business (Article (65) The effective retirement and social security law for workers. It is noted that the legislator has set a maximum and minimum pension salary.), as for the second pillar, it is based on (the need for it), that is, it presents the believer as long as the main indications are official (usually according to medical reports or the period specified according to social scientific studies and included in laws and regulations) indicates the need for it, which is often related to these benefits (rights in kind) provided to the insured as a case of medical treatment until recovery) and proof of disability (or in the case of disabling unemployment as an example cash benefits until a job is

found.It is noted that the case of providing benefits in some cases is taken into account in assessing their value to some social considerations prevailing in societies, such as dependence on the insured for living and the degree of kinship, which includes an assessment of the living classes, such as the case of pensions for the successor (the insured worker) (65/c) The law of retirement and social security for workers in force. It is noted that the worker's retirement because of age and because of the worker's health and illness differs by calculating his pension for the work injury, as it is paid to the latter (80%) of the average wage in the last year of work or the period in which he worked If it is less than a year, provided that it is not less than the minimum wage prescribed for his profession.).

Subchapter II - financial retirement benefits

It has been scientifically proven that economic prosperity (productive development) rises steadily with the improvement of the level of health, the working class is called, and the worker is assured of his future and his dependents.

First, the pension

If the decision of referral is issued wherever a request is made, there is evidence that it is included in one of the approved cases for retirement according to the legal text. As for the referral that causes service, it requires proof of the worker's previous insured service for which contributions were paid for the period specified by law. Such as the official records of the Warranty Department, the books of souls, status identities, and even work contracts registered with the competent authorities, and every person with knowledge must prove the age of the worker, provided that a copy is sent from him to the worker and to the competent ministry and the insurance department for audit purposes, and the worker (or any related person) has the right to object to the decision Confirmation within (15) days from the date of his notification to a committee formed for this purpose, and its decision shall be final and irreversible.

As for the method of calculating the pension, it is based on multiplying the fixed percentage, which is (2.5) from the average monthly wage of the retired worker for the last three years, multiplied by the number of months of guaranteed service and divided by (12), or the fraction of the last month is considered as the month and the average monthly wage for the service

period The insured if it is less than three years, according to the provisions of the cases that fall within the retirement (service) or old-age retirement (It differs from the end-of-service gratuity (long service) stipulated under the Labor Law, which the employer is responsible for paying to the worker in accordance with Article (45) Labor Law No. (37) of 2015.), and with the possibility of it being transferred to his heirs if they meet the conditions specified by the legislator ().

Secondly, end of service gratuity

It means sums of money that represent a total cash compensation paid in one payment to the insured person whose service has been terminated and who did not meet the conditions for entitlement to the pension salary or because of his entitlement to a full pension salary from other than one party. entitlement and payment to the insured person or to his dependents upon his death (). It is calculated on the basis of his average monthly wage multiplied by the number of years of service, and it is calculated as a fraction of a year for a full year in one of the following cases:

1- The worker has reached (60) years and the woman is (55) without years of service.

2- Resignation of the insured worker from her job because of her marriage or status.

3- The worker's departure from the scope of the labor law, such as his transfer to an employee or employer.

4- Leave the country permanently and the minister has approved his travel (Article (78) Retirement and Social Security Law No. (39) of 1971).

Third - Cases of prohibition against duplication

Where the Retirement and Social Security Law does not allow the following:

1- The combination of two full pension salaries, whether they are from the insurance department or another department, such as the state, but the best is paid to him.

2- It is not permissible to combine two pensions, one full and the other partial, of any kind, but the best is chosen.

3- It is not permissible to combine any full retirement salary from the Insurance Department with the end-of-service gratuity (the Security Department) (Article (75) of the Retirement and Social Security Law.).

4- The retirement salary may not be sold, exchanged, assigned to others, or stipulated for the benefit of others, and every act of this type or the like is null and void.

5- It is not permissible to seize the retirement salary except by a court ruling, except in the amount of one-fifth (Article (78) Retirement and Social Security Law No. (39) of 1971.

The second requirement - the judiciary

If the judiciary is the protector of the rights of the citizen, the termination of work is the protector of the rights of the weaker party in the work relationship, and it is the judiciary competent to settle individual and collective labor disputes, a judiciary dictated by the need to facilitate litigation against workers in accordance with the protective nature of the rules of the labor law by determining the interest of the worker when claiming his rights and encouraging him Therefore, the provisions of Labor Law No. 37 of 2015 regulating the labor lawsuit came in Articles 165 to 169. When we extrapolate the texts, we can look at the labor lawsuit considered by the labor judiciary in terms of the formation of its courts, qualities, competencies, strength of judgment and its effects.

Subchapter One - Degrees of the Labor Court

Labor Court

The Labor Law has assigned the task of considering individual disputes to courts of first instance (Article 168 of the Labor Code in force), which are labor courts (Article 165/first, second, third. The applicable labor law.).

First, Divisions:

They are the courts formed in each governorate, averaging one or more courts when needed, and in comparison with the intensity of the lawsuit, and they are the residents of the governorate, provided that it is not less

than one court, and its decisions are subject to appeal before the courts of higher degree (Article 100 Labor Law No. 37 of the year), so their judgment is preliminary (. Article 1/fifteen of the Labor Law in force).

Second: Formation:

A judge nominated by the President of the Supreme Judicial Council and based on a proposal from the President of the Court of Appeal.

Labor Issues Authority

1. Its basis: The Iraqi legislator enlisted the formation of a commission called (the Labor Cases Commission) to look into the appeals stipulated in this law.

2. Formation: The formation of the Court of Cassation is carried out exclusively by the judges of the Court of Cassation and based on a decision of the Supreme Judicial Council.

Section Two
Competences of the Labor Judiciary

The Iraqi legislator has mentioned in the applicable labor law a number of competencies to spend work, contrary to what is usual for repealed laws, as he referred to the Labor Court (individual dispute) that exists between one worker and one employer, which is the usual, and between the workers as a whole and the employer as a collective dispute.) The objection to the judgment in absentia issued by the Labor Court shall be within 10 days from the day following notification, Article 168 / Fourth Law in force

Traditional Jurisdictions of the Labor Court

These are the competencies that arise when one of the parties to an individual dispute in the work relationship appeals before it. The Iraqi legislator included them in Article 166/first in the labor law in force as follows:

First: Civil and criminal lawsuits and disputes stipulated in this law and in the Law on Retirement and Social Security for Workers and other legislation.

Second: Temporary decisions in cases within its jurisdiction. It is noted that in the absence of a working court, jurisdiction shall be transferred to the Court of First Instance.

Third: Cases and other issues for which the laws provide for the jurisdiction of the Labor Court.

The new competencies of the Labor Court

The legislator's behavior in the law in force has taken a new approach in referring some of the issues of collective dispute to the work judiciary, which is usually specialized in the individual dispute, and for two phases:

First: The stage of referring the individual or collective dispute to the Department of Employment and Loans: in accordance with Article 157 of the applicable law, and failure to reach a solution to the dispute or failure to judge. At that time, the Labor Court must decide on the dispute within 30 days from the date of submitting the complaint, and its decision is final and intolerable. Appeal to the Court of Cassation.

Second: Referring the dispute to the Labor Court after engaging the disputing parties collectively to find a solution through mediation and arbitration and in accordance with Article 161, as they must resolve the dispute within seven days from the expiry of the 48-hour period from the date the request was received by the court. Within 15 days from the date of notification of it or considering it notified, and the Court of Cassation decides on it within 15 days from the date of its receipt, and its decision is final.

Third: The worker shall have the right to resort to the Labor Court to file a complaint when he is subjected to any form of forced labor, discrimination or harassment from employment and profession, provided that he shall be punished, if the act is proven, by imprisonment for a period not exceeding six months and a fine not exceeding one million dinars or one of these two. The two penalties .

Section Three - Degrees of Labor Court Decisions

Its decisions are represented by two degrees issued by the same court:

First, the preliminary ruling:In all the appeals submitted by the parties to the relationship of an individual dispute, whether the matter results from the application of the Labor Law or the Social Security Law or from the employment contract or the labor system, about existing rights or the interpretation of the law, except that the most prominent of these decisions, which are primarily i.e. The possibility of appealing the decision of the labor court is the imposition of a disciplinary penalty on the worker represented in the termination of his contract through Dismissal from work , as the worker appeals against a dismissal decision within 30 days with appealing the decision of the labor court within 30 days from the date of notification, as well as the rest of the decisions of the labor court issued within the aforementioned competencies In Article 166 of the applicable law, at that time, the Court of Cassation either ratifies or reverses the decision or returns it to the Labor Court to reconsider (investigate or replace the penalty) (Article 169/ Labor Law, this was represented in returning the dismissed worker to his work or having a financial right such as allocations or sharing profits and dues, which must be repaid.), and the judgment in absentia can be objected to and the court returned as well (Article 45 of the Labor Law in force).

Secondly: final decisions

They are the decisions of the Labor Court in the various disciplinary penalties listed by the Labor Law and signed by the employer on the worker after exhausting the procedures for imposing the disciplinary penalty, which (does not reach the limit of dismissal), as the worker can appeal the penalty decision within 15 days from the date of his notification of the decision and the decision of the Labor Court is final That is, it cannot be appealed to the Court of Cassation ( ). Effects of the judgment against the employer Although the Labor Court may not issue a decision in favor of the employer, we find that there are two texts imposed in Chapter Thirteen of the Labor Judiciary Law No. 37 of 2015 as follows:

First: Devolution of fines:

The fines imposed on the employer as a penalty by the Labor Court for violating a provision of the law shall be transferred to the Workers' Retirement and Social Security Fund in order to determine whether the worker benefits from them, albeit indirectly ().

Second: Determining a maximum limit for the execution of the judgment:

The decision issued against the employer must include, according to a binding text, the following:

1. Removing the traces of the violation.

2. The law specified 60 days from the date of the judgment gaining a final degree to remove the employer's violation.

3. In case of repetition, the employer shall be punished with twice the penalty previously imposed on him.

The third requirement - the effects of terminating the employment contract

Termination of the work contract entails a number of legal effects, often related to the rights of the worker to protect him after the weak party and the most affected by the termination of the work contract for losing his source of income and having to search for others if he is lucky.

First branch

The employee's financial rights

It relates to the liquidation of the money owed by the worker, which is considered a debt owed by the employer.

First: End of Service Remuneration:

A worker whose service has been terminated is entitled to an end-of-service gratuity calculated on the basis of two weeks' wages for each year of service rendered to the employer in the cases in which the worker is dismissed for breach of his commitment. The end-of-service gratuity is doubled when the termination committee and labor court nullify the dismissal decision and for failure to enable reinstatement, and it is paid in

the form of double the remuneration validity when the employer violates the provisions of Article 48 of the Labor Law in force, as in the case of termination of union membership and others.

Second: Liquidation of the financial rights of the worker:

The termination of the work contract requires that the employer calculate the rights owed by the worker and liquidate all those rights in accordance with the provisions of the applicable law, such as liquidating his wages for work for the previous period or wages resulting from additional work and wages for accumulated annual leaves and vacations he did not obtain during the work year The latter, in addition to his dues and compensations due to other legal reasons (such as grants, participation rate, etc.).

second branch

Non-financial rights of the worker
These have previously been varied between the provisions mentioned by the Iraqi legislator, starting in the past, and what is developed in Labor Law No. 37 of 2015 in force.

First: Warning to the worker:

The legislator included the worker's right to a written warning before the employer terminates his contract, which is limited to (30) days before the termination, provided that he is compensated in the event that it is proven that the worker was not given a warning, as it is called the warning allowance (The court approved the expert's report in which he calculated the wages of his annual leave and the wages of holidays and official holidays, Decision No. 1894/First Civil/2004, Labor Judiciary, p. 19.).

third branch

Statutes of limitations and penalties for termination of the employment contract

In the law in force, the Iraqi legislator stresses on each of the two parties to the work contract by paying the worker to claim his rights within a specified period to protect transactions and stabilize rights. On the other hand, he stressed the penalty on the employer who violated the provisions of his obligations towards workers, which calls for its rules to be binding

and from the public order This is to reduce the unfairness of workers' rights, especially in the financial aspect.

First, the obsolescence:

Appeals claiming fixed rights for the work relationship are not heard after the lapse of three years from the date of its entitlement, and the limited period for hearing the claim for the occurrence begins from the date of the entitlement of the right, but it is not possible to reclaim the money paid by the employer to discharge the right after its fall, this is what is related to the right As for the criminal right for the criminal act resulting in harm, the claim for compensation shall expire after (5) years from the date of its inception (The limitation period shall be interrupted by a judicial claim for the right even if it is submitted to the competent court, as well as by a notice of payment. The limitation shall also be interrupted if there is a moral or material impediment with which it is impossible to claim the right, such as a sudden beating or interruption of transportation, unless the worker is close to the employer.).

Second: Penalty for Violation:

It is noted that the legislator is strict with respect to the obligations of the employer stipulated in relation to the provisions of the worker's rights arising from the employment contract, starting with a penalty of imprisonment for a period of not less than (3) months and not more than a year and a fine of not less than five hundred thousand dinars and not more than one million dinars (Article 51/First and Second Labor Law in force (The Labor Court decided to dismiss the case because he did not object within the legal period despite overpowering the decision to terminate his service) Decision No. 39/First Civil/2001, Labor Judiciary, p. 123) .

Third: Certificates and documents of the worker:

As we have already indicated, the employer must return the worker's documents in his possession that were delivered to him at the time of concluding the contract, and he must also provide the worker with certificates related to his service for the period prior to the service certificate and the discharge certificate, as well as the information requested by the worker that are correct (), and it is not permissible to The employer may refrain except by using his right to imprisonment in

accordance with the general rules, such as for the worker's refusal or for his continuation to pay the compensation he owes or the failure to perform what he was initially obligated to perform (Article 41/Second/G, H Labor Law in force).

The second topic - the legal organization of the teaching work of private colleges

Within the framework of the legal rooting of the teaching center in private colleges! The dispute arose in the legal circles over the challenge to the position of the two teachers in a private college. And since there was a ruling about a decision that took a negative orientation in the interpretation of the relationship between the university professor and the university (or the college and the private institute), we will be facing two important axes to discuss the modern legal negative interpretation of the Court of Cassation for this relationship with two assumptions, which are the establishment of the direct contractual relationship between The professor and the private college are direct, but the second assumption is that the relationship is indirectly formed by seconding him from his ministry to the private university and on the basis of the provisions of Article (17\first\j) of the Private Education Law No. (25) for the year 2016.

The first requirement - the direct contractual relationship between the professor and the private college

The Private Higher Education Law No. (25) for the year 2016 is the repealing heir of its predecessor Law of Private Universities and Colleges No. (13) for the year 1996, which came up with all of its objectives:

First - Providing primary and higher university study opportunities (theoretical and applied) for the purpose of contributing to making quantitative and qualitative changes in the scientific, cultural and educational movement in Iraqi society. Second - dissemination and development of knowledge in Iraq, and third - carrying out and encouraging scientific research, developing the scientific method, developing a sense of national belonging, a spirit of responsibility, and commitment to the national line based on the unity of the people)Article (3) of the effective private higher education law .Which is based on the

establishment of universities, colleges and civil institutes with administrative and financial independence and enjoying a legal personality, whether Iraqi or foreign, but according to the conditions set by the Council of Ministers after a proposal submitted by the Ministry of Higher Education Where the Ministry of Education monitors it to follow up on the scientific and administrative progress of the university in accordance with the requirements of the law. And since the focus of the founding was science and the dissemination of culture, which is generally handled by teachers who are specialists in that field, the relationship emerges as follows:

Section one - establishing the relationship between the teaching staff and the private university (college).

The legal relationship had to be established between the teaching staff, whether it was permanent (owners) or temporary (lecturers) in accordance with the general provisions of the types of contracts (and as we previously explained in the first topic), it must have an end.

First - the formation of the teaching staff

According to Article 33 of the effective private higher education law, the teaching staff consists of (professors, assistant professors, teachers, assistant teachers), as well as the equivalent degrees in international universities, and visiting lecturers can be used.

Secondly, the relationship formula

The law did not explicitly highlight the form of the relationship (and certainly its nature), so a contract is made between the professor and the qualified universities (colleges) to develop a printed prototype for contracting with him that the university council (college) encounters as usual and the university professor either accepts it as it is or rejects it (it is It is as close to a contract of submission as can there be negotiations between the two parties) without making any modifications, but we can deduct from it that it is a work contract from the following evidence:

Starting ( ).

The second topic - the legal organization of the teaching work of private colleges

Within the framework of the legal rooting of the teaching center in private colleges! The dispute arose in the legal circles over the challenge to the position of the two teachers in a private college. And since there was a ruling about a decision that took a negative orientation in the interpretation of the relationship between the university professor and the university (or the college and the private institute), we will be facing two important axes to discuss the modern legal negative interpretation of the Court of Cassation for this relationship with two assumptions, which are the establishment of the direct contractual relationship between The professor and the private college are direct, but the second assumption is that the relationship is indirectly formed by seconding him from his ministry to the private university and on the basis of the provisions of Article (17\first\j) of the Private Education Law No. (25) for the year 2016.

The first requirement - the direct contractual relationship between the professor and the private college

The Private Higher Education Law No. (25) for the year 2016 is the repealing heir of its predecessor Law of Private Universities and Colleges No. (13) for the year 1996, which came up with all of its objectives:

First - Providing primary and higher university study opportunities (theoretical and applied) for the purpose of contributing to making quantitative and qualitative changes in the scientific, cultural and educational movement in Iraqi society. Second - dissemination and development of knowledge in Iraq, and third - carrying out and encouraging scientific research, developing the scientific method, developing a sense of national belonging, a spirit of responsibility, and commitment to the national line based on the unity of the people. Which is based on the establishment of universities, colleges and civil institutes with administrative and financial independence and enjoying a legal personality, whether Iraqi or foreign, but according to the conditions set by the Council of Ministers after a proposal submitted by the Ministry of Higher Education

Where the Ministry of Education monitors it to follow up on the scientific and administrative progress of the university in accordance with the requirements of the law.

And since the focus of the founding was science and the dissemination of culture, which is generally handled by teachers who are specialists in that field, the relationship emerges as follows:

Section one - establishing the relationship between the teaching staff and the private university (college).

The legal relationship had to be established between the teaching staff, whether it was permanent (owners) or temporary (lecturers) in accordance with the general provisions of the types of contracts (and as we previously explained in the first topic), it must have an end.

First - the formation of the teaching staff

According to Article 33 of the effective private higher education law, the teaching staff consists of (professors, assistant professors, teachers, assistant teachers), as well as the equivalent degrees in international universities, and visiting lecturers can be used.

Secondly, the relationship formula

The law did not explicitly highlight the form of the relationship (and certainly its nature), so a contract is made between the professor and the qualified universities (colleges) to develop a printed prototype for contracting with him that the university council (college) encounters as usual and the university professor either accepts it as it is or rejects it (it is It is as close to a contract of submission as can there be negotiations between the two parties) without making any modifications, but we can deduct from it that it is a work contract from the following evidence:

1- Supervision and direction (the availability of legal subordination corner) and clearly

And it stands out through - to supervise the course of training and its methods and development by the department.

Evaluation of the performance level of faculty members

Suggesting a plan to rehabilitate and develop scientific staff

Approval of research projects submitted by members of the department or branch.

Thus, we note the highlighting of the role of the scientific department in following up on the professor, after whom he is directly responsible, to submitting reports and evaluations to the College Council and then to the University Council, thus showing the element of personal consideration when contracting with the professor (as in the work contract of course) and reaching the control of his work It is apparent from his scientific level, his experience and the extent of his ability to develop his capabilities, that the above will affect the professor's position, so he will continue for the next academic year or not.

The second section - the rights of the professor at the end of the relationship

And according to the fact that the law did not specify how to end the relationship between the university professor and the private university (college), and in accordance with the general rules by the end of the contracts and the inability to establish them on the one hand, and the professor’s submission to the internal instructions to work within the educational institution, and the extent of the university’s acceptance of his existence, the method of teaching and the possibility of failure Looking at the minor violations of the work directed at the teacher, or the total dissatisfaction with his work, which calls for the termination of the relationship, and the rights resulting from the end of the relationship, whether natural or punitive, according to the effective private higher education law, the following results:

First, the penalties

According to Article 39 of the above-mentioned law, the Minister of Higher Education, based on reasoned recommendations from the Higher Education Council, may deprive a faculty member of teaching temporarily or permanently if he commits an act that violates (values) while retaining the right of the teacher to appeal to the judiciary for a period of (30) day from the date of notification of the decision.

Second - contractual rights

According to Article (50), the service of the teaching staff in the university and private colleges is calculated for the purposes of (promotion and promotion) and retirement, and reference was made to the establishment of the so-called (teaching pension fund and workers in universities, colleges and private institutes) that has a legal personality and Financial and administrative independence, represented by the President of the Higher and Private Education Council, is financed and disbursed from it in accordance with the Unified Retirement Law No. (9) of 2012 and the Retirement and Social Security Law for Workers No. (39) of 197, which was approved by the Council of Ministers recently. And in a (providing found) in accordance with the regulations issued and published in the Official Gazette.

The second requirement - establishing the legal relationship on the basis of Employee secondment

It is within the competences of the University Council (college) that the eligibility is to accept the Employee secondment of tracing, and to extend and end the Employee secondment period (the subject of the research on the issue of the Federal Court of Cassation decision)! The following points must be clarified here in this type of relationship between the university professor and the private university (college):

Section one - the concept of Employee secondment

According to the amended Civil Service Law No. (24) of 1960 in force, the employee can apply for a secondment to another institution, in which the employee is outside the government's ownership, with the job's bond remaining in place, and it can continue for five years, provided that his department is obligated to return him to an equivalent job. his grade after the end of the secondment period, and if it happened and if the borrowed department terminates the employee's service before the loan period, it is obligated to pay his salaries until he is returned to his job by his department. The seconded employee may be promoted under the direction of the head of his borrowed department in accordance with Article (38 | P5), with the obligation to note that the employee fulfills the job requirements for occupying the position.

The second subsection - the rights and obligations of the professor whose services are loaned

In alignment with the applicable civil service law house and the effective private higher education law, the seconded professor must have the following:

First - Obligations of the loaned professor

The seconded professor is subject to the same obligations imposed on the professor contracting directly with the eligibility (university or college) of submission and control with regard to his work, research and even promotion, which means that he is subject to the provisions of reprimand and thanks like his peers who are on the owners, with the possibility of not taking them by his original department when he submits a grievance to that.

Second - the rights of the e secondmented professor

It is noted that the secondment request is based on the need as is clear in advance and conditional on the approval of the Minister and for a period not exceeding five years, provided that the loan to the university (college) has the following eligibility:

1- The university (college or institute) that beneficiary of the loan services shall have the full financial rights represented by his salaries and allowances.

2- It is not permissible for the professor's wages (because here they are no longer salaries but payments from the private sector) to be less than that of his peers in private colleges.

3- The university (college) eligibility shall undertake the deductions resulting from the right of the loaned professor according to the basic law applied against him initially and required to the responsible authorities and send them to them.

The third requirement - legally conditioning the relationship

With this, we believe that the relationship between the professor and the university (college) eligibility applies to the description of the work relationship in the case of the first assumption (direct) because of the

availability of elements of control and supervision, so it is not independent as indicated by the judges, as it is administratively and supervisory subject to the Council The college (to the department council in the first place) and the possibility of depriving him from practicing his basic work with a recommendation made by him 'and thus he is bound in the first place by his contract with the educational institution and the conditions it sets, and then secondly by the internal work instructions (internal work system) in the institution and thirdly (The department's scientific plan and its methodology) and the fourth (the directives of its direct head) represented by the head of the department (in fact, it is closer to the old work contracts that were close to the contracts of compliance), so here the competent judiciary is in the consideration of appeals, and the work is definitely done. As for the second assumption regarding the matter Regarding the relationship of the private educational institution with Professor As for the professor whose services are loaned to him , it is in application of the Civil Service Law (his organizational status) despite his work for a private institution with regard to the part related to his work and secondment, and what is related to penalties and thanks, so it is an appeal either The employee's judiciary, as for the part related to his salary rights, we believe that he is subject to the labor law, and certainly when conflicting with the judiciary, there is a reference to the obligation to be less than the salaries of his counterparts in government colleges, which means that it is possible to agree that it exceeds the minimum level, which is a prevailing principle In the rules of labor law in general and in force.

Conclusion

The stability of social thinking in the importance of the public job and its superiority over work in other sectors pushed for many years the decline in development in all fields in Iraq and its decline more in the stage calculated on a change in the ideologies of legislative thinking and considering private work more inclined to profitable investment at the expense of quality and The quality of the work, which is clearly shown in the most recent legislation in force and the interpretations of the courts, especially the discriminatory ones, and considering that the work in university teaching transcends what can be considered work (a professor cannot be a worker) and meets the general legal conditions as well as those included in the special legislation (labor laws and Social Security), that the foregoing led

to the emergence of negative results represented in the first place in the decline in the importance of the labor law at a time when various parties are trying to push it forward in order to ensure proper implementation and in the second degree the loss of the rights of a university professor working in private colleges and the absence of a future guarantor his rights (previously it was definitely covered by the insurance law according to previous legislation) and he certainly loses the means to guarantee his rights mentioned in the labor law, such as the end of service gratuity and your mother The intention to appeal to the administrative and space authorities when arbitrarily terminating his contract.

Sources:

1- Durand et Jaussau , litteral des castes , 1944
2- Dr. Abdul Hakim Al-Rifai, Political Economy, Part One, Second Edition, 2009.
3- Hasan al-Fakhani, Part IV, Judgment of Cassation in Labor and Social Security Disputes 1981.
4- Dr. Mahmoud Gamal El-Din Zaki, Employment Contract in the Egyptian Labor Law, Egypt,1983 .
5- Muhammad Al-Basha, Social Insurance and its System in the Kingdom of Saudi Arabia, 1978