

Upgrade public servants in Iraqi law: Analytical study between the texts of civil service laws and government decisions

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Abstract

The upgrade is a material and moral right for a public employee in Iraq, guaranteed by the law and fortifying him with some guarantees because of his direct prejudice to his living needs, and it is the goal that the employee seeks by doing his work most completely and efficiently comparable to his stay in that degree and that address, However, this right may be subject to restriction due to several factors, including temporary ones that disappear with the disappearance of the impediment and some of them are permanent. And between these and those, the research sheds light on those barriers and guarantees.

Keywords: Analytical study, civil service and law.

Introduction

The upgrade is considered one of the privileges provided by the public office for the employee who seeks in one way or another to it, and upgrade is intended to move the employee from a lower level of employment to a higher degree of employment after the availability of a set of conditions set forth by the law, bearing in mind that this right is defined by the text of the law in terms of conditions for obtaining He must or even withhold it due to the presence of temporary or permanent factors that prevent it from being entitled to it, and the administration has no right to dispose of it by an increase or decrease to enhance the principle of legality governing its actions.

First, The importance of the study: The importance of the topic comes from the importance of the upgrade itself, being one of the rights and privileges of the public office, and being one of the topics of the administrative law, in addition to its importance in the psychological and financial stability of the employee, which results in his performance of his work in two ways to ensure the regular and steady functioning of the public facility.

Second, The problem of the study: The Iraqi legislator did not specify in the Civil Service Law the definition of the upgrade, but rather the State and Public Sector Employees 'Salary Law No. (22) for the year 2008, and did not specify a standard for the competency of the employee entitled to upgrade, which means that favouritism and favouritism penetrate it. His constant confusion between the concepts of upgrade and upgrade despite their differences from each other, in addition to the multiplicity of legislation governing upgrade, but despite its abundance, we notice its ambiguity and lack of frankness in addition to the legislative weakness in clarifying the position on promoting the employee who has withdrawn the hand, and we do not forget the publications of the Ministry of Finance against the rights of the employee The year includes her book numbered (Budget Department / Expenditures / 401/173777 on December 19, 2019) in which she directed to stop the upgrades and bonuses for the year 2020 on the grounds of financial deficit, as this is an infringement of the law and withholding of a right passed by the last.

Third, The objective of the study: The research aims to: Determine the meaning of upgrade and its conditions, stand on the guarantees of the public employee's right to upgrade, explain the upgrade procedures, and clarify the most important factors that prevent or delay the upgrade of the public employee in Iraq.

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Fourth, Research methodology: We will adopt in this research the method of analytical study of some legal texts that are governed by an upgrade in terms of conditions for obtaining it and the obstacles that prevent it from being temporarily entitled and diagnosing defects.

Fifth, Research Structure: We devote three sections to studying this topic. In the first topic, we deal with the concept of the upgrade, and in the second topic: the guarantees provided by the laws of public service for the upgrade, and in the third topic, we deal with the factors behind the upgrade.

The first topic

Upgrade concept

Promoting an employee is a right for an employee who completes a good, actual service of one year in state departments without punishment or penalty that is an obstacle to his upgrade. It is also considered a great moral and material incentive that meets the employee's needs in exchange for what he provided to the public office, and we do not forget that it is one of the most important job systems within the framework of the public office. And as follows:

The first requirement

Definition of uplift

The upgrade is defined in language that: against reality, it is "raised and raised" (al-Razi, without a year of publication). As for the convention, we find multiple definitions, and perhaps the reason for this is because some of the laws that regulate public office have traditionally confused the concepts of upgrade and upgrade (Mansour, 1976). As is the case in the Arab Republic of Egypt when the term upgrade was not used and the word upgrade was satisfied, "... taking into account that the worker fulfils the requirements for occupying the position to which he is upgraded, the upgrade shall be from the position immediately preceding it in the degree and the qualitative group to which it belongs" (Abdullah, 2005). As for the Iraqi law, the upgrade was not defined in the Civil Service Law No. (24) for the year 1960, but it was defined in the Law on Salaries for State and Public Sector Employees No. (22) for the year 2008 as being the employee's transfer in salary and job rank. These laws distinguished between the upgrade which is A transition between job titles and upgrade that results in an increase in the amount of the salary without changing the job title, but the administrative custom took place on the basis that upgrade is the employee's transition from his lower job grade to a higher job grade within his career hierarchy (Helou, 2006).

As for the administrative jurisprudence in Iraq, it has tended to the legal definition of an upgrade in Egypt, meaning that it confused between upgrade and upgrade, and the researcher supports the jurisprudential opinion that differentiating between them is that upgrade is nothing but an increase in the salary in the functional degree. As for the upgrade, it is nothing but a change in the powers and specializations (Al-Qadi, 2012). In a related context, we find that the Iraqi judiciary is the other, a confusion between the two concepts. In a ruling by the General Assembly in the State Council, it says, "... upgrade from one degree to another and from one job to another." The upgrade is a transition from one degree to another. And changing the powers and responsibilities assigned to the employee (Al-Aboudi, 1995).

The second requirement

Objective rules for upgrade

To issue the administrative order for an upgrade, a set of conditions must be met, the Iraqi legislator was keen to include them in Article (19) of the Civil Service Law No. (24) of 1960, as follows:

1. Availability of an administrative order with a vacancy of a degree equivalent to the grade to be upgraded: the employee can, through this condition, pass all ranks and stages of the career ladder, and the absence of this condition creates a logical impossibility in promoting the employee as it is not sound to raise the employee to a level occupied by an employee Another that leads to duplication and job conflict (Allawi, 2009), taking into account the specific group to which the employee belongs, the holder of a bachelor's degree in law with the seventh degree is raised from the title of legal assistant to legal and not to an accountant or statistician, for example (Zoghbi, 2004), but if the duties of the degree to which he is raised differed For the degree to be

transferred from, the employee is placed under probation for six months, renewable once to prove his competence in the duties entrusted to him. In this regard (Allawi, 2009).

2. Proving the employee's ability to occupy the position in the new degree and distinguishing him from others: The Iraqi legislator considers the criterion of ability and competence the first basis when selecting the employee worthy of upgrade and this is done through the annual reports prepared by the formation to which the public employee belongs according to several data, including Annual performance report, academic qualification, job activities, seniority, and training courses in which he participates, meaning that the employee must have a degree of competence and skill to deserve an upgrade, and here we find a kind of exaggeration and exaggeration because the upgraded employee has not changed his position, but rather He remained in the same position that he held, which is what the administrative custom has always been. It is more appropriate to apply this provision to the system of an upgrade.
3. Completing the legal period required for upgrade: The legal entitlement to upgrade is intended to complete the legal period required for upgrade, taking into account the legal texts on which delaying the upgrade of the employee is based on certain reasons included in it, such as disciplinary punishment, for example (Jawad, 2013). These are the conditions necessary for the upgrade, and after the employee fulfils all the conditions mentioned above, the employee deserves to be upgraded from his lower level to the highest in the career ladder consistent with his testimony, but this transfer does not take place automatically, but an administrative decision must be issued by the competent authority For his circuit.

The third requirement

Procedural rules for upgrade

In addition to the substantive rules for the upgrade, other procedural rules must be observed by the administrative body and the employee together to be fruitful in granting the employee the rights and advantages resulting from his upgrade, according to the following details:

1. Forming a ministerial committee at the headquarters of the ministry to which the employee belongs, and a sub-committee in the formation to which the employee belongs directly (the Ministry of Higher Education and Scientific Research as a model): After the Federal Budget Law has been approved and published in the Official Gazette and circulated to universities, the Ministry of Finance shall issue its publications. The organizer of the file of upgrades, bonuses and others, and the concerned ministry and university continues to form committees for upgrades. However, the formation of this committee is a necessary guarantee to know the extent of the employee's entitlement to upgrade or not and to guarantee his right if he deserves an upgrade, and this committee has the final say in reviewing the relevant documents and data such as job performance reports, administrative order of appointment, and another matter for bonus and last upgrade. Written thanks and appreciation from the head of the department, training courses, and the academic certificate obtained after the last upgrade to be able to grant him the legally stipulated foot (Al-Qadi, 2012). And all of this has been stipulated in the Civil Service Law, where this committee must be formed by order of the minister or the head of the entity not affiliated with a ministry or whoever authorizes him to head an employee whose job is no less than an assistant director and two members whose job is not less than a director specialized in nominating employees for upgrade After verifying the availability of the legally stipulated conditions (Ibrahim, 1978) . The recommendations of the aforementioned committee are considered subject to study and the reason for the split of opinions is the extent of its binding obligation to the minister or head of the department, and the argument in that is that these committees were not formed if their recommendations were not binding? Another team believes that the recommendations of the upgrade committee are not binding, and perhaps the reason is to make these committees have competence in issuing administrative upgrade orders, and this is contrary to the law that defines these bodies (Mahdi, 1992), which is what the researcher supports.
2. Deleting the degree to be upgraded from and introducing a new degree: It is what is known as deletion and creation, and it is not mentioned in any of the laws of the public office, but rather is the result of administrative development and is stipulated repeatedly in the general budget laws for each year and is considered a procedure with the utmost arbitrariness And subject to no air of influential people in the state ministries, including the Ministry of Finance, and the administrative problems generated by this in the midst of what Iraq suffers from the deterioration of the financial situation and the suspension of the movement of appointments, upgrades and bonuses in 2020, the best example of this.

3. The issuance of the administrative order of upgrade: This procedure is considered the last in the series of procedures that precede the actual upgrade of an employee and his transfer from his current rank to another level higher than in the hierarchy of job grades, as the administrative decision is defined as: "Final legal action issued by an administrative authority and Arranges legal implications " (Helou, 2006). However, the administrative order of upgrade must have several elements in it for its validity, including its issuance by specialists, with the presence of a specific reason and form for it, location, purpose or goal behind it, i.e. moving from one degree to another, and the resulting financial impact Without that, it is considered null and has no legal effect (Al-Half, 1977). Noting that the Iraqi legislator in the civil service law in force did not indicate the competent authority to issue the administrative order of upgrade, which is a legislative deficiency that he avoided in the Law on Salaries of State and Public Sector Employees No. (22) of 2008 when he indicated that it was issued by the competent minister or the head of the entity not associated with a ministry And in light of the decentralization system, we find that some ministers have been granted the authority to issue upgrade orders after adhering to its controls. It should also be noted that the due date for upgrade is the date of completion of the legal period stipulated for the upgrade, taking into account the legal provisions that are postponed for the upgrade, such as punishment and leave without pay, but the Ministry of Finance does not consider the date of entitlement to be the date of the issuance of the administrative order to raise in light of the stifling financial setback that he is going through. Iraq in 2020.

The second topic

The guarantees provided by the laws of public office for upgrade

The laws of the public office have strengthened the protective provisions for the upgrade with instructions and controls that facilitate the employee's access to his right to upgrade. The administration in the process of carrying out its duties in upgrade may deviate from the law in good or bad faith, but it is obligated to monitor its actions by the principle of legality and review its decisions on its own. Or through a grievance raised by the employee concerned with the upgrade, and therefore upgrade is fortified with a set of guarantees and two demands, as follows:

The first requirement

The guarantees guaranteed by the Civil Service Law No. 24 of 1960

The Iraqi legislature has given the public employee the right to appeal all administrative decisions affecting his rights that have been granted to him by the public office, including his right to upgrade, and this is before the Personnel Judiciary Court (Allawi, 2009) , and its provisions are binding on the administration, provided that the appeal is preceded by the grievance submitted by him to his administration that sees after His eligibility for upgrade, contrary to his belief that he deserves to be upgraded, but this right, i.e. the right to appeal, is not sufficiently secured, as we may be facing a legislative deficiency in this regard ¹⁷, which means returning to court rulings because the administrative law is judicial of origin when the Supreme Administrative Court ruled: It is not permissible for the administration to create effects other than those due to the fact that the employee is continuing with the service, and this means that he is entitled to the rights and privileges legally determined, including upgrade when his conditions are fulfilled (Al-Anzi, 2011). Having a vacant job degree in the certified staff of the department to which the employee belongs is also an important guarantee for his right to be upgraded. Promoting the plaintiff has no basis from the law. " (Helou, 2006) Such a ruling and others are an example worthy of the public servant clinging to in front of the abstaining or backward administration to upgrade it.

The second requirement

Internal and external control of the administration's work as a guarantee of the public employee's right to upgrade

Administrative oversight and judicial oversight over the administration's work is the ultimate guarantor of the principle of legality that the administration must safeguard and not infringe upon, so it is a significant guarantee of the public employee's right to upgrade, and that guarantee can be demonstrated through the following:

1. Internal control and self-auditing by the administration itself and this enable the administration to review its decisions and to change, amend or withdraw from the principle of legality, as well as to assess the extent to

which those decisions are consistent with the goal for which those decisions were issued (Al-Zubaidi, 2000). For example, the administration withdraws the administrative decision if it was issued outside the boundaries of its spatial jurisdiction, as it is a decision that is not permissible for it to withdraw it without being bound by the legal withdrawal and cancellation dates (Al-Aboudi, 1995).

2. Judicial oversight: The judiciary is free and impartial, does not complement or compromise, and it is for the administration - if it deviates from the principle of legality - in the lookout, it conducts its work and guides it to the best way to good management, without requiring the administration to do or abstain from work, but its rulings force The administration must submit to the law and subscribe to its authority, and it may even go beyond compensation for the administration's decision, and not only to cancel it. It should be noted that it is a subsequent control that must be challenged by the person concerned, and in any case, the jurisdiction is held in the consideration of employee claims arising from civil employment rights Before the Employees Judiciary Court (Mahdi M. H., 2017) , and as a matter of priority, appealing against the decisions of the administration aimed at punishing the public employee by the provisions of the State and Public Sector Employees Discipline Law No. (14) of 1991 is considered an important guarantee of his employment rights. According to the ceilings set by the law above in Article (15/3 and 4) thereof, and even to distinguish them before the Supreme Administrative Court, taking into account the legally established deadlines.

The first requirement

Factors that are delayed for upgrade according to the State and Public Sector Employees Discipline Law

And it is known as the impediment to upgrading, and it is considered temporary. It does not deprive the employee of his right to upgrade in a permanent manner, but rather for a certain period until the impediment that has been prevented from the upgrade is removed. And to achieve the principle of reward and punishment in the administrative law, the employee must be rewarded with glory in his work and the punishment for the negligent who is not glorified, and disciplinary punishment can be defined as the employee's breach of his job duties, which requires the rise of his administrative responsibility (Mahdi G. F., 1992) and the disciplinary penalties in Iraqi law are (8) And the consequent effect of this is to delay upgrade for various periods, as follows:

1. Drawing attention delays upgrade or increase for (3) months. 2- Warning: it results in delaying the upgrade or increase for (6) months. 3- Salary cutoff: It is delayed for five months if the salary is cut for a period not exceeding five days, and if it exceeds it, one month for each day of the cutoff. 4- Reprimand and delay it for one year. 5- Salary decreases and upgrade or increase is delayed for two years. 6- Downgrade and upgrade for civil servants who are subject to the regulations that adopt the financial grading system, their salary is reduced to the minimum level of the degree immediately following his grade With the granting of the bonuses he received in his home degree from it and by measuring the increment determined in his home degree from it, and it is returned to the salary that he was receiving before lowering his degree after spending three years from the date of imposing the penalty with the rotation of the period spent in his last salary before the imposition of the penalty, and in relation to the regulations Which is taken under the system of increase every two years, so the effect of the penalty is to reduce two increases from his salary and it will be returned to his salary that he was receiving before his demotion after spending three years from the date of imposing the penalty with the rotation of the period spent in his last salary before the imposition of the penalty, as for the annual increase system the effect of the punishment By reducing three annual increases from his salary with the rotation of the period spent in his last salary before the imposition of the penalty 7- Chapter 8- Dismissal, which results in the employee being removed from the public office (Attia, 1971).

The second requirement

Forcibly removing the employee from his work (withdrawing the hand)

Withdrawal of the hand can be defined as: "a precautionary measure intended to remove the employee from his work temporarily on the occasion of an investigation being conducted with him" (Mahdi G. F., 1992), and the Iraqi legislator discussed it in Chapter Five of the Discipline of State and Public Sector Employees Law No. (14) for the year 1991. The matter related to its impact on upgrade, because the aforementioned law did not mention any text dealing with that effect, not even the Civil Service Law No. (24) of 1960, except that the administrative custom was to refrain from promoting a civil servant who had withdrawn the hand, regardless of the reason for withdrawing the hand, whether due to work From the work of his job or because of another, and this was confirmed by the uncles of the

Ministry of Finance No. 9909 on 7/6/1966 and the summary is determined by what it resulted from as a result of the withdrawal of the hand. He had not withdrawn his hand, but if it is proven that he was negligent, then his upgrade is determined in light of the penalty issued against him, starting from the date of its issuance, with a deduction from the period of withdrawal of the hand.

The third requirement

Delaying factors for upgrade mentioned in some laws

Some Iraqi state laws have stipulated legal texts that may delay the temporary upgrade, and some of them are listed, for example:

1. Unpaid leave: the reason is that it is not considered an actual remunerative service, which leads to a temporary deprivation of his right to upgrade, unlike his peers who continue to serve or those who enjoy sick leave (Al-Zubaidi, 2000).
2. Leaves granted based on the National Authority for Accountability and Justice Law: This is a political procedure more than it is legal and takes away the rights of the employee because those covered by the Accountability and Justice Law are referred to retirement without granting them the leaves stipulated in the law.
3. The permits granted forcibly to the employees of the hot areas that are under the control of the armed groups due to the lack of the balance, for example, the uncles of the Ministry of Higher Education and Scientific Research in its book / Legal and Administrative Department No. (379 on 01/20/2015) and also the Cabinet's book No. 2/5/27/13585 on 23/4/2015) who considered their interruption of actual service.
4. The employee's salary reaches the maximum limit determined for his grade: here it is not possible to raise it or grant the annual bonus according to the text of Article 9 First of the Civil Service Law No. (24) of 1960, for example, an employee who obtained a middle school certificate cannot be upgraded to the third degree. Rather, he remains in the fourth degree until its end, and then he is granted the third-class salary.

Conclusion

1. The upgrade means the employee's transfer from the position he occupies to a job located in the higher level directly next to his grade within his career hierarchy.
2. In the Law of State Employees and the Public Sector No. (22) of 2008, we noted the legislator's confusion between upgrade and upgrade.
3. There is a concept called accelerating upgrade, but the legislator did not cover it with clear and fair legal rules, as we noticed the existence of several controls governing upgrade and reasonable guarantees that guarantee the right of the employee to it.
4. Certain reasons may arise that delay or prevent the employee from his right to upgrade, and they may be permanent or temporary according to each case.

Recommendations

1. We recommend that our Iraqi legislator should distinguish between an upgrade, which is a change in the powers and specializations, and upgrade, which is an increase in the employee's salary, as mentioned in the term vacant job in the civil service laws and the salaries of state employees and the public sector, while it was more appropriate to use the word degree Because upgrade is based on the financial limit for the grade and not on the job itself.
2. To oblige the Ministry of Finance after issuing uncles in violation of the law, and that its work is governed by the Iraqi system of legislation.
3. Determine the competency standards that are a condition of upgrade tapes so that they do not include the meanings of favouritism, favouritism, etc.

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