

The Interests Considered from the Placement Decision

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The research of the Iraqi legislator in the laws of the civil service, as the specific legal provisions of the decision of placement, are scattered between laws and regulations. The competent authority to amend the laws, which is undoubtedly the legislative authority, represented by the House of Representatives in Iraq, must draw up legal texts. In the Civil Service Act, placement, and the mechanism of doing so, are specified for fear of abuse of the administration with its discretion in placement, considering that the basic law for the functional service.

Key words: *Considered, civil service, legal, public administration*

Introduction

The public servant is considered a means of public administration, so that his position is organisational, and of course the natural person works for the administration in accordance with its legal texts and instructions, in order to achieve the purposes of the multiple administration. In periods of public office these are the main needs of the cadres of the public service. The administration performs its procedures by changing the legal positions of employees, whether by transportation or placement, so that it can achieve what it wants according to its activities.

Placement is a way to redistribute the cadres of staff in state institutions in order to serve the public in achieving their various interests, and thus the decision of placement is to move the employee temporarily from his place of work to another place in order to achieve the outcome desired by the administration.

The Importance of Study

The importance of this topic of research lies in determining the outcomes that the administration seeks to achieve through the placement of the public servant from one side of his work to another and for a specific period, since the public office does not guarantee that



the public servant remains in his place of work until he is retired. If that happened, the administration would be paralysed, which would prevent it from achieving its goal. In the different stages of life, the job shows developments that the administration is putting all of its possibilities into, in order to keep up with the new circumstances and the development of situations that are taking place.

Study Methodology

In our study of this subject, we will adopt the analytical approach, through the detailed description of a specific topic to obtain scientific results in an objective way. We will show the concept of the decision of placement, as well as clarify the interests that make the administration use placement in the modification of temporary functional centres.

Study Problem

The problem with the study is the following two questions:

- 1- Are there real interests in the placement of the employee from one side to the other?
- 2- Are there any drawbacks in the decision to place?

Study Plan

The subject of the interests considered from the decision of placement will be studied according to the following scientific plan. As we were exposed in the first topic to the concept of the decision of placement, we divided this research on two sections: i) the definition of the decision of placement and ii) the conditions of the decision of placement. In the second topic we addressed the effects of the decision of placement. It was divided into two parts:

- i) The positive effects of the decision of placement, and
- ii) The negative effects of the decision of placement.

The First Topic: The Concept of the Decision of Placement

The public service administration, in order to achieve its various activities, needs natural people to carry out a number of tasks through which it seeks to achieve its activities these people are public servants of various specialties and professions. The public servant works impartially from his personal interests to represent the will of the administration with all the work assigned to him, and in certain cases the administration transfers the employee from work task to work task. Sometimes he does the same work as he does in the original institution temporarily in another institution, and this is what distinguishes placement from the transfer. With a transfer, the employee is to permanently leave the original institution by

an administrative decision, while the placement is limited to a period after its completion, and the employee returns to his previous job in his original institution. The decision to place is limited by a set of conditions that must be met in order for the decision to be legitimate and, in favour of all of the above, we will divide this research into two sections.

The First Requirement: The Definition of the Decision of Placement

The decision to place an employee in the position has definitions at the linguistic and conventional level, and in order to be able to explain these concepts, we will divide this requirement into the following two sections (Majid, 1979).

First Branch: Placement in the Linguistic Sense

The meanings can overlap in the statement of the word placement. Some say that the word "lineage" is the sum of a percentage, and it says in the language dictionaries that placement was done by a relative, or belonged, relatively speaking, because it is attributed to it. The form of the Arabic came in the form of belonging, affiliation, and the effect affiliated with it. When a percentage belongs to a people who are not among the main population, the word "affiliation" means joining, and, because the phrase belongs to a family, that means claiming to be attributed to it even temporarily (Majeed and Yassin, 2011); (Mazen, 2016).

Second Branch: Placement in the Conventional Sense

The decision is defined as an administrative decision issued by a competent authority, which is intended to assign the employee to temporarily carry out vacant job tasks of the same degree as his original job, or of the degree that is directly superior to it, whether the position assigned to him is from the same department as the assigned employee or in another department (Melhem, 2002). The placement was also defined as "the temporary establishment of another job outside the administrative authority in which he works and retains his career grade" (Al-Nabawy, 2007). Some defined it as an administrative decision issued by a competent administrative authority to move the public servant from his original place of work to another place of work temporarily when it was seriously deficient in staff numbers or expertise (Al-Nimri, 2006); (Najib, 2015).

We say that the decision to place or, as it is called in some legislation and in the jurisprudence, is an administrative decision issued by the administration. This is provided that all the column of this administrative decision are available when issuing it, and its purpose is to transfer the work of the employee from his original job to another job in the same administrative body, or another administrative entity. It is temporary, and the reason for this is a lack of employment or the temporary need for the expertise of the assigned employee.

The placement may be total in the sense that the employee is free from his or her duties in the administrative body, where he is considered to be one of their staff, or partly, in the sense that he remains in charge of the functions of his or her original job, in addition to the functions of the job assigned to him, without conflict between the functions of the two jobs, or a conflict in the function of each job (Ali Mohammed and others, 1993).

The Second Requirement: the conditions of the validity of the decision of placement.

The legal work issued by the administration is called ‘Administrative Decisions’ and ‘Administrative Contracts’ and with regard to administrative decisions, they are not immune from appeal as indicated by the Constitution (Najib, 2015); (Nawaf, 2009). In the absence of all conditions and staff, where the administration aims to correct the administrative decision, the fate of this decision could be annulment by the administrative judiciary. The decision of placement is an administrative decision that requires the availability of the administrative decision for its validity, in addition to a number of conditions, and these conditions will be addressed on two types in the following two branches:

First Branch: Conditions Relating to the Public Servant

The conditions for the validity of the placement decision relating to the public servant are:

First: The Decision to Place a Public Servant Must Be Issued

The public servant must have specific elements of his legal status, namely that the decision to appoint is issued by a competent authority, that he should work in a permanent position, and that he receives a monthly salary (Nawaf, 2009). There needs to be no different conditions, in the employee’s contract. His job was permanent and the contract applies to him as a public servant (AbdelGhani, 1976).

As for the fate of the temporary employee, it is not possible to issue a decision to place him if his job in the administrative authority in which he works is not a stable job, i.e. if it is temporary. Here we talk about the administrative authority’s need for the specialisations of the person as part of the running of a public office, which are considered the means of the administration in achieving its multiple and differentiated purpose. It takes into account the opinion of the Iraqi State Council on this subject, which has stressed that there is no possibility for a decision to be made to assign a temporary employee from one administrative authority to another administrative entity (Khaled, 2009); (Esmat, 2008).



Second: The Placement of the Employee to a Public Institution

As mentioned above, the public servant works in public state institutions within the conditions of appointment and the job description of this public employee. This means that the decision to move the employee temporarily from his place of work to another place of work in one of the state institutions, is not possible if the employee is to move to a lesser job. For the state, this transition changes the placement to another system called 'loan', which means the suspension of functional duties and financial rights in the administrative entity to which the employee belongs. If he moves to a private entity to work for a period of not more than five years, he can return to his original job (Mazen, 2016). In other words, a public servant may move partially and specifically between state institutions in order to engage in functional work that helps to achieve the public interest (Esmat, 2008).

Third: The Employee Returns to His Original Job after the End of the Placement

The decision to place is an interim decision that expires after a certain period of three years. It is calculated from the actual service in the original administrative entity from which it is attributed.

Fourth: It is not Permissible to Place the Employee in Charge

The employee who has been assigned to another administrative entity may not issue a decision to place himself in another destination. The matter here is that the reason for the decision for placement is the real need for the services of the employee attributed to that body. If they assign him to another party, this ends the reason for the first placement, i.e. that it does not require the services of the employee assigned to it. The decision to place is a temporal decision and not continuous in terms of time.

Second Branch: Conditions relating to the nature of the placement decision:

The conditions of the placement decision related to his health are:

First: The Placement of a Vacancy

The reason for issuing the decision to place is the existence of a vacancy in one of the public institutions in the state. The transfer of the public servant is made in order to meet the requirements of administrative work in that position. There is no justification for issuing the decision to place the public servant in the absence of the vacancy. This was confirmed by the Iraqi Cabinet in one of its decisions regarding the placement of the employee that it is in order to meet the actual need for the vacant position in the place to which the public servant is assigned.

Second: The Placement Should be Temporary

The placement of the employee is not permanent, he will leave his original job and be attributed to another job because of a need in that job, and in order to not have problems in his original job, the placement must be temporary. Placement in Iraq has a maximum duration of three years, since the instructions of the owners No. 23 of 1979 divided the duration on the basis of type of job. For example, for teachers, the duration of their placement is one year renewable only once, while other staff are assigned a maximum of three years.

Here we have to ask why this difference in durations? Is the job of teacher or teacher more important than that of other job disciplines? The legislator had to set the term equally because everyone could leave their jobs and be attributed to other jobs. If in their original place of work, if they did not need to be employed, why not transfer them so that they could remain permanently in the new position to fill the shortfall in that administrative body?

We believe here that the legislator should intervene and resolve the issue by setting the maximum limit for the period of placement of the public servant in order to make the principle of the functioning of the public facility regular and continuing in the public interest.

Third: The Actual Need for Placement

The main purpose of issuing the placement decision is to fill a vacancy in one of the institutions in the state, so the administration decides to place one of its employees whose work is consistent with the shortage in that vacant job. This depends on the standard of discretion the administration has to decide in a way. The objectivity of the actual need for the partial withdrawal of its staff to fill the shortage of a particular job is essential so that there is no harm to the original job.

Fourth: A Competent Authority Issues the Decision to Place

The decision of placement must be issued by a competent authority so there is no challenge by the judiciary. The decision could be invalidated if the jurisdiction is not achieved in the administrative decision; the decision can be from the jurisdiction attributed to the employee with the success of his original department, and may have the approval of the minister if the placement of the employee from one side in one ministry to another is subordinate to another ministry.

The Second Research: The Effects of the Placement Decision

The decision to place, as mentioned above, is to move the public servant temporarily from his place of work to another place of work because of the existence of a vacancy, and in this temporary transfer his interests are different, because the administration to which the public servant belongs in the event of his placement will inspect his career services. At the same



time he will provide his services to another administrative entity and that helps the public administration achieve its multiple objectives.

Of course, the decision to place through the practical reality has positive and negative implications, and this is what we will talk about in the following two sections:

The First Requirement: The Positive Effects of the Decision of Placement

The public servant seeks to fulfil all his duties as stipulated in the law, in order to be entitled to his or her professional rights, and, since the public servant is in a regulatory position, he is considered, in our opinion, to be the weakest link in the field of public office. The reason for this is that the compliance with all legal texts have to be practised by the moral person. In fact the public servant is only a tool to achieve the objectives of the administration, so the decision to place him helps to solve the problem of the lack of employment in the institutions of the state, and may help to achieve the principle of equality in the number of staff. This is what we will address in the following two sections:

First Branch: Reducing the Shortage of Staff

One of the advantages of the decision of placement is that the administration has the right to temporarily transfer some of its staff in order to fulfil the shortage of some job grades in a certain administrative entity. The completion of transactions for citizens in state institutions is one of the most prominent problems faced by individuals and employees alike, because the number of staff in some institutions has a clear shortage. This is due to several reasons, most notably the great disparity in financial benefits between state institutions, showing institutions that are repellent to individuals in the field of recruitment, and the institutions that struggle for employment in them (Ali, 2019).

Placement helps to fill the shortage of staff even for a temporary period, and in addition, the placement helps to create a balance in the number of staff. This helps to expose the talents and abilities of the cadres that collide with each other due to the large numbers of employees in the original institution. The placement also makes the idea of a shortage of staffing almost non-existent because the administration knows where its human resources are weak and seeks to achieve better production in record time at all levels that it considers important by filling the staff vacancies. (The National Commission for Academic Evaluation and Accreditation, 2009)

Second Branch: Achieving the Principle of Equality in the Number of Cadres

State institutions at the moment suffer from inequality in the number of staff: in some institutions, for example, educational, we find that the number of staff in one university is up to 105 employees in one college while in another college the number is less than 9

employees. This means that the shortage of staff is found at the level of the teaching staff, for example, in the law faculties of Iraqi universities. The number of teaching staff has a great disparity with some of them having up to 17 teaching staff while others have 80 teaching staff. Here the administration has to intervene in order to achieve the principle of balance in numbers, which in turn contributes to achieving equality in the number of staff. The best solution for this is the activation of the placement system, as it helps to temporarily transfer the staff in order to address the lack of functionality, which in turn achieves equality in the number of employees in state institutions. The decision of placement within the ministry (the institution), is a simple and quick procedure for the transfer of the employee and in this way, the administrative institution will carry out its work to ensure equal employment burdens for its cadres.

The Second Requirement: The Negative Effects of the Decision of Placement

The decision to place, despite the positives, it is not without its drawbacks and the reason for this is because the administration in some cases exercises personal standards in issuing a placement decision for the public servant. This can result in harm to the public interest, especially in the subject of salary terms. The employee may leave his place of work when he is assigned to another party, and this results in problems in his previous work, where they require a mechanism to protect his first job, so that it does not become vacant.

We will divide this requirement into the following two sections in order to highlight the negative effects of the placement decision.

First Branch: Financial Benefits Difference

Financial benefits in jobs are not fixed and the reason for this is that there are allocations that exist in some institutions and do not exist in other institutions, and since the personal standard may be included in the decision of placement, the assigned employee will receive higher amounts of money than he receives in his original job.

This will encourage employees in some institutions to use placement as a means of increasing their financial benefits. From there, it is up to them which of the most benefits and privileges they receive.

In addition, some legal texts confirmed that it is permissible to assign the employee to the university service and the department assigned to it should pay all his salaries and allowances from its annual budget (Esmat, 2008). One of the texts confirmed that the department that benefits from the services of the employee is responsible for his salaries and allowances throughout the period of placement (Ali Khattar, 2003).

The dissolved Revolutionary Command Council indicated that the administrative body benefiting from the services of the employee assigned to it should bear its salaries from the



date of its start, if its original department is self-funded, and from the beginning of the fiscal year to the date of placement, if its original department is centrally funded.

Although some jurisprudence supports this subject, we believe that the salary difference makes the budget in the state negatively affected by the large numbers of employees who are attributed to other administrative entities. If the administration can provide a financial increase for them, why not open the door to appointments despite leaving vacant job grades in the present one. We would like to make the statement that the public servant tends to his own interest in bureaucracy, which is rampant in most state institutions, and that means that the main objective of the employee in moving is to increase his financial dues and not for loyalty in administrative work.

In the same context, there is a doctrinal opinion (Saad and Abdullah, 2019) stating that the employee who is assigned must receive his salary from the original employer and if it were not the same, to be paid additional wages as a result of the additional burdens in which he performs the placement phase. In this instance we agree, and the reason for this is that the employee stays on the same salary. There is no inflation in the state budget, so the employee is not encouraged to stay and seek mediation in order to obtain the decision of placement, and this ensures that the placement is in the interest of the employee.

In the same way, we find that an employee who enjoys a study leave receives his salary and, although he has some provisions, he does not provide any career services during the study, so does it mean that he should cut his salary from his original institution? If yes, who will pay his salary if he studies inside Iraq? Therefore, it makes sense that the financial stability should be clear in the disbursement of salaries from the original departments for the assigned employee, with additional wages given because of assignments for placement tasks in accordance with the nature of his work. The Council of State has issued its decision concerning the chancellor assigned to the Council of State to receive a lump sum allocation of 30% of what he receives in his original district.

Second Branch: Confusion in the Original Function

The courtesies in the field of public office are multiple, and the most prominent of these cases are the administrative decisions issued by the placement of the public servants and this gets confused with the original function of the public servant. Many members of the House of Representatives or officials are helping some of their constituents or relatives by pressuring the official administrator to agree to their placement in administrative bodies they think are distinctive. The advantage is only in the financial aspect, because all public functions aim to achieve the goals of the administration, and there is a burden on the administrative officer, as he has to secure all the jobs by filling the shortage in functional places. The decision to place, if it is done in accordance with personal criteria, is considered negative on the position held by the employee prior to placement. The realistic aspect of placement we find useless. The

reason for this is the control of the administrative officer on this type of decision because of the criterion of discretion in issuing this type of resolution.

First: Results

- 1- Placement is considered an administrative decision exercised by the administration in accordance with the standard of discretion.
- 2- Placement is considered temporary; it is limited to a period of time.
- 3- Placement differs from transport and loan, the latter means the transfer of the employee from an administrative entity to a private entity within the state or outside the country while the placement is from an administrative entity to another administrative entity. The transfer is the transfer of the employee to an administrative entity permanently.
- 4- The decision to place is not valid unless it is a public servant and there must be a suitable vacancy to which the employee moves temporarily to fill the gap.
- 5- There are positive outcomes from the decision of placement, the most prominent of which is to fill the shortage of vacancies and the placement is distinguished as a fast-implementing administrative decision.
- 6- We conclude that placement may affect the original positions if the employee is placed in a subjective manner.

Conclusion

After writing our research, we have come up with a set of findings and recommendations that can be summed up as follows:

Second: Recommendations

- 1- We suggest that the legislature unify the legal texts that address the status of placement in the civil service law, because it is the basic law of the actions of the public servant.
- 2- Controls must be set for the placement process in order to narrow the discretion of the administration in its jurisprudence when placing the public servant.
- 3- The shortage of public functions of some administrative institutions can be addressed by issuing placement decisions in institutions where there are large numbers of employees and their placement to institutions that lack staff.
- 4- There must be a unified mechanism for placement issued by the Council of Ministers, the purpose of which is to protect the original positions held by the public servant so that they are not vacant.
- 5- The organisation of placement helps to distribute administrative tasks among the staff in a way that achieves the principle of equality as well as a balance among employees in the performance of their duties in a way that helps the administration to achieve its goals.



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