

The Staff Court and its Role in Protecting the Employee in Public Sector

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The Iraqi legislator tended to protect the employee in the public sector by stipulating a judicial panel (the staff courts) assigned to settle all administrative disputes between the employee and the administration. These disputes may be related to civil rights, such as salary, bonuses, rewards, promotion, or other rights that arise for the employee in the public sector under the civil service law or other regulations and laws. Also, they could be related to the challenge to disciplinary penalties issued by the administrative authority against the employee in case of an offense related to his/her duties. The staff court shall consider such disputes in order to ensure that the rights and freedoms of the employee in the public sector are protected from the abuse or injustice of the administrative bodies in the state.

Key words: *The staff court, protecting, employee, public sector.*

Introduction

The legislator is not content with the provisions contained in the staffing rules to review the decisions of administration concerning staff affairs and the associated complaints. The administrative body exercises self-censorship of its decisions in terms of legality and adequacy, which may lead to the reconciliation between the employee and the administration (Saad, 2006). However, this often does not achieve justice for the employee in public sector because the authority assigned to consider his complaint is the one by which the decision or act of complaint is made. Since the administration is an opponent and a judge at the same time, this makes individuals lack confidence. This is because it is a prerequisite in justice that the judge should be a third-party (At-Tamawi, 1957). Therefore, the legislator has stipulated the determination of the judicial authorities that enjoy integrity and independence to settle disputes between the employee and the administration. The law of Iraqi advisory state council has determined this authority, which is the staff court. The Iraqi legislator defines this court

as having the original jurisdiction to settle all staffing-administrative disputes in order to ensure the legal protection for the employee from abuse by administrative authorities, as well as equality among all parties and the public interest. The problem of this study is that the administrative bodies have the power to punish the employee, which may often result in injustice or abuse by those bodies. Accordingly, the Iraqi legislator tended to establish a staff court to settle staffing disputes between the employee and the administration and to ensure the protection of this employee. Indeed, this is related to legal problems when defining the disputes that fall within the jurisdiction of the staff courts and its role in protecting the employee in public sector. Based on this, the main problem can be formed in this question:

- What is the Staff Court and what is its role in protecting the employee in public sector?

And other sub-questions can be derived from this question as follows

1. How is the Staff Court established?
2. What is the composition of the Staff Court?
3. What are jurisdictions of the Staff Court?

Moreover, this study mainly aims to

1. Explain how the Staff Court is established and formed.
2. Identify the jurisdictions of the Staff Court in Iraq.
3. Clarify the role of the Staff Court in
4. protecting the employee in public sector through considering staffing disputes.

The importance of this study lies in defining the important role played by the staff courts through which the legal protection of the employee can be achieved. Undoubtedly, the stipulation of a judicial panel assigned to settle administrative disputes between the employee and the administration guarantees the legal protection of the employee and justice because of the independence of the judiciary from the administrative authorities. Hence, the judgments are issued by the judges who enjoy integrity and independence in work. The study is based on the analytical method to analyse the constitutional and legal texts related to the subject in question. This is to assess the position of the legislator on the issue in question as well as clarifying the relevant legal texts based on the opinion of jurisprudence and the judgments as much as possible.

Section One: The Establishment and Composition of the Staff Court

Iraq was one of the countries with a unified judicial system. The courts have the general authority to settle all disputes in the state, regardless of their parties, whether they were ordinary individuals or administration bodies. Then, the Iraqi legislator replaced the unified

judiciary system by the dual judiciary system. This is done by issuing law no. (106) of 1989, which is the second amendment act to the State Council Law no. (65) of 1979 whereby a court was established for the administrative judiciary. Thus, Iraq became one of the countries with the dual judicial system, which later included the Staff Court.

1. The Establishment of the Staff Court in Iraq

Upon issuing the law no. (106) of 1989 which represents the second amendment act to the State Council Law no. (65) of 1979, Iraq becomes one of the countries with a dual judicial system. The State Consultative Council with its bodies, the General Disciplinary Council, the Administrative Court and the General Authority of the State Consultative Council, has the jurisdiction of the administrative justice. This Council is specialized in administrative disputes, which were previously within the jurisdiction of the ordinary courts (Omran, 2008). The staff court is originated in the General Council, the General Disciplinary Council, which was established under Law no. (41) of 1929 to deal with cases filed by the employee against decisions of disciplinary committees. The Council has exercised effective censorship of administrative decisions concerning employees in the field of disciplinary punishments or civil service rights (An-Naimi, 2013). The jurisdiction of the council is then expanded to consider cases concerning the employee's rights arising from the Civil Service Act No. (103) of 1931. The judicial organization in Iraq is developed and efforts are made to establish a specialized administrative judiciary in Iraq. Then, the Reform of the Judicial System Act No. (35) of 1977 is issued. This Act refers to the necessity to establish special courts to deal with the cases of public sector employees and professional organizations, as well as to settle disputes where the ministries, public institutions or the public sector represent one of their parties (Naser, 2019).

With the issuance of the State Consultative Council Act No. (65) of 1979, the Council of Discipline becomes one of its forms. Then, the Second Amendment Act No. (106) of 1989 is issued whereby the Council of Discipline exercises the task of the administrative court in relation to public employees in the state. After that, Act No. (17) of 2013 which represents the fifth amendment act to the State Consultative Council Act No. (65) of 1979 is issued. Article (9) of this Act stipulates that the phrase "the Staff Court" replaces the phrase "the General Discipline Council" wherever it is contained in laws, regulations and instructions. Thus, the Staff Court becomes exercising the tasks and authorities exercised by the General Disciplinary Council.

2. The Composition of the Staff Court in Accordance with the State Consultative Council Act

The State Consultative Council Act stipulates the necessity of forming the Staff Court headed by the Vice-President of the Council for Judicial Affairs or by a counselor and two

consultative members or assistant counselors (Article 7/1 of the Fifth Amendment Act to the State Consultative Council Act No. (17) of 2013). Judges of the first or second category could be assigned to this court through a nomination from the Supreme Judicial Council to the administrative courts or the staff courts (Article 7/3 of the Fifth Amendment Act to the State Consultative Council Act No. (17) of 2013). Accordingly, the Staff Court is replaced the General Discipline Council. It is good to change the title of the General Discipline Council to the Staff Court because the old title does not include all the tasks and authorities assigned to it. In addition, the new title is more appropriate to the requirements of the organization of State Council. The presence of a component within the State Council entitled the General Discipline Council (i.e., the presence of a council within the council) is unacceptable formally (Najim, 2015). The legislator stipulates the establishment of the staff courts in four main regions, which are the northern region, the central region, the Middle Euphrates region, and the southern region (Article 7/1 of the Fifth Amendment Act to the State Consultative Council Act No. (17) of 2013). Also, it is permissible to establish the staff courts in other regions and governorates by a statement issued by the Minister of Justice, upon the proposal of the Presidency and to be published in the Official Gazette (Article 7/2 of the Fifth Amendment Act to the State Consultative Council Act No. (17) of 2013). The aim of establishing more than one staff court is to facilitate the process of proceedings for the parties to the case, decide the judgment on cases within a short time, and lessen the duties of the State Council (Naser, 2019).

Section Two: The Role of the Staff Courts in Protecting the Employee

The jurisdiction of disciplinary power to the administrative authorities against the employee does not render their authority uncontrolled. Hence, the administrative authorities must exercise their disciplinary power within the framework of legality and general principles of the law. This in turn guarantees the rights of employees without undermining them. Otherwise, their decisions against the employee are beyond the scope of legality and deserve cancellation and compensation if necessary (Nurjan, 1965; Radhi, 2010). In order to achieve censorship of the acts of the administrative authorities and ensure that the administrative panel is not a judge and an opponent at the same time, the Iraqi legislator has decided to establish a staff court to exercise the task of censorship of the administrative authorities, and to ensure the protection of employee rights arising from the application of the Civil Service Law No. (24) of 1969 as amended. Consequently, this court will be a reference for challenging the disciplinary punishments issued against the employee in Iraq, as well as ensuring that the rights and freedoms of employees are protected from abuse by administrative authorities in case if these rights are violated.

1. The Jurisdictions of the Staff Courts and their Role in Protecting the Employee

The basic guarantee that protects individuals from abuse of administration is that the latter is subject to the law, so that all decisions made by the administrative authorities must be within the scope of provisions. In addition, if they perform an illegal act by making an unlawful decision, this decision should be abolished and compensated (Boudhiaf, 2009). Therefore, there should be an independent body that exercises censorship of all decisions issued by administrative authorities, including those against employees, and to protect the rights of employees in the State from abuse by administrative authorities. The Iraqi legislator has decided that the body exercising the role of censorship should be a judicial body, due to the integrity and independence of the judiciary from the parties to the dispute and familiarity with legal affairs and dispute issues (Al-Hilo, 1995). Judges are independent in their work and only the law has power over them in their jurisdiction, and no authority may interfere in the judiciary or in justice affairs (Article (88) of the Iraqi Constitution in force of 2005). Thus, the jurisdiction of the staff court to consider disputes related to their careers with administrative bodies ensures justice and protects their rights and freedoms from abuse by the administrative bodies. The Staff Court is competent in two areas important to the public employee, namely, the consideration of cases arising from the imposition of disciplinary punishments, as well as cases related to civil service rights including salaries, bonuses, allowances and other rights enjoyed by the State public employee. Hence, all administrative disputes between the employee and his/her employer are either due to a penalty or because of a right that s/he has been deprived of or wished to receive.

a. The Consideration of Cases on the Rights of Public Employee in Iraq

The Staff Court has the authority to settle cases concerning the rights enjoyed by the employee in accordance with his status. These rights are stipulated in the Civil Service Act represented by the right to salary, bonuses, allowances, leave and other rights. The Iraqi legislator has entitled the staff court the authority to settle cases related these rights. Article (5) of the Fifth Amendment Act to the State Consultative Council Act No. (17) of 2013 which amended Article (7) of the State Consultative Council Act stipulates that the staff courts has the authority to consider the cases filed by the employee against the State and public sector departments on the rights arising from the Civil Service Act or the laws or regulations governing the relationship between the employee and the employer where he works. These cases are represented by disputes concerning salaries and allowances due to employees, promotion and reemployment, as well as those filed by the employee to challenge the administrative orders and decisions issued on employment, promotion, bonuses, dismissal during training period, and secondment of employees...etc. (Naser, 2019). The Iraqi legislator has expanded the authorities of the court in the Fifth Amendment when considering cases of civil rights. This is no longer limited to the consideration of rights arising from the Iraqi Civil Service Act No. (24) of 1960 as amended, but the court has the authority to consider all cases concerning the rights of the employee, regardless of their source.

Undoubtedly, this is a good attempt by the Iraqi legislator, where the rights of public employee are not limited to those rights stipulated in the Civil Service Act, but the employee enjoys other rights in some laws and regulations in force in the State, in order to protect all the rights of the public employee, regardless of their legal source.

The Staff Court has emphasized this in its provisions, including: based on the investigation and discussion and clarification of the prosecutor in the hearings, the court found that the plaintiff is challenging the sequence (5) of the administrative order no. (1765) on 21 January 2019, which includes the payment of his allowances on the basis of certificate obtained during the service... after considering this issue, the court opines that the purpose of including an Article in the budget laws for many years to address the issue of calculating the employee's certificate during the service is not to affect the employee's salary or allowances during the application and the calculation of the certificate. Consequently, the decision challenged is incorrect and contrary to the law (Decision of the Staff Court, Baghdad No. 1841/2019 on 2/6/2019 on Case No. 536/M/2019).

It is noteworthy that the jurisdiction of the Staff Court in the consideration of previous cases entitles it the full judicial authority represented by cancellation and compensation. The court's power in the consideration of such cases is not only limited to the cancellation of the contested decision, but also to sentence compensation to the public employee for damages suffered by him due to the abuse by administration of his career rights. The issued sentence includes compensation for physical or moral damages to the rights of the employee from the moment of abuse, or from the date of his due till the court's judgment (Aliwat, 2014). Accordingly, the Iraqi legislator has assigned the staff court to consider all cases relating to all the rights enjoyed by the public employee, which are subject to violation by the administration, in order to ensure that these rights are protected from any abuse by the administrative body.

b. Challenging the Disciplinary Punishments

The Staff Court exercises an important jurisdiction that is the consideration of the case on challenging the punishments issued by the administrative body. In this concern, the Iraqi State Consultative Council Act states that the staff court has the authority to consider the cases filed by the employee against the State and public sector to challenge the disciplinary penalties stipulated in the State and Public Sector Employees Discipline No. (14) of 1991 (Article (5) of the Fifth Amendment Act to the State Consultative Council Act No. (17) of 2013 which amended Article (7) of the State Consultative Council Act). According to this Article, the court is competent to consider the cases filed by the public employee against the decisions of disciplinary punishments imposed on him, which fall within the jurisdiction of the minister or head of the department. These punishments include draw the attention,

warning, salary deduction, rebuke, reduction of salary, and dismissal. The legislator has expanded the permissibility of appeal to include all disciplinary penalties. Formerly, the penalties of draw the attention, warning and salary deduction are not challenged as if they are terminal penalties that cannot be challenged. However, the legislator has amended this by the First Amendment Act No. 5 of 2008 to the State Employees Discipline Act (Al-Jobori, 2009). Undoubtedly, this expansion guarantees justice for the public employee so that the administrative judge of the Staff Court has the authority to cancel all disciplinary punishments without exception. This is consistent with the provisions of the Constitution. This means that all decisions made on any punishment against the public employee are administrative decisions that can be challenged at the competent judicial courts and some may not be immunized from judicial censorship; otherwise, this is contrary to the provisions of the Constitution. The Constitution stipulates that the provision in the laws prohibits the immunity of any act or administrative decision from appeal (Article (100) of the Iraqi Constitution of 2005) and only the so-called acts of sovereignty¹ shall be immunized (Hussein, 1986). The disciplinary decisions do not fall within the sovereign acts and thus are certainly subject to the judicial censorship. When considering the cases of appeals against disciplinary punishments, the authority of the Staff Court is not only the censorship of legality, which is limited to examine the legality of administrative decisions without being assessed by the judge, but also to assess the adequacy of the disciplinary punishment imposed on the offending employee to the offence committed by him (Yusuf & Khudhair, 2017).

This is emphasized in the provisions of the Staff Court, including: based on the investigation and discussion, the court found that according to the petition, the plaintiff challenges the decision no. (112) on 3 August 2017, which includes his dismissal from the position of the governor of a provincial district.... After questioning the plaintiff at a hearing on 1 August 2017, the decision containing his dismissal is issued. The court has reviewed the questions and found that there are general questions and do not include specific offences, including he is not present at the district center to provide services to citizens after liberation and obstructing the work of the organizations. The court has found questions that involve disciplinary violations and are not qualified (if proven) to be the exclusive reasons for the dismissal, which include: failure to follow the work of district directors; failure to deliver water and violation of the orders of the Prime Minister. Since none of the exclusive reasons for dismissal stipulated by section (8) of Article (7) of Act of Provinces not Organized in a Region No. 21 of 2008, thus it is decided by agreement to cancel the contested decision (Decision of the Staff Court, Baghdad, No. 1714/2017 on Case No. 2087/2017).

Accordingly, the court considers the adequacy of the punishment along with its authority to supervise the legitimacy of the decision issued on the disciplinary punishment, and to ensure

that the administrative authorities follow the procedures stipulated by law when issuing the sentence. This is because the procedures determined by the laws to issue disciplinary punishment against the employee constitute guarantees in the interest of the employee; therefore, the administrative body must respect those guarantees and procedures. The role of the staff court is demonstrated in determining the validity of all the procedures whereby the punishment is issued, which entitles the court the authority to supervise the legality of the offence and disciplinary punishment (An-Naimi, 2013). The appeal by cassation on the sentences issued by the staff courts at the Supreme Administrative Court is permissible within (30) days from the date on which it is informed or considered informed (Article (7/9/A & C) of the Fifth Amendment Act to the State Consultative Council Act No. (17) of 2013). The duration prescribed for challenging judicial decisions is of the public order and the failure to adhere to it results in losing the right to appeal (Decision of the Supreme Administrative Court No. (211, the Staff Court, Cassation, 2013) on 5 September 2013; decisions and opinions of the State Consultative Council of Iraq for 2013-2014, Ministry of Justice, Baghdad). These procedures or the dates of appeal do not differ at the staff courts whether the case is related to the rights arising from the Civil Service Act or the laws or regulations governing the relationship between the employee and the employer, or those cases are related to the challenge of disciplinary punishments stipulated by the State and Public Sector Employees Discipline Act No. (14) of 1991. The legislator has done well to standardize these procedures and dates in order to facilitate them for the employee who files the appeal, lessen the complexities of the proceedings and save time, especially these cases are under the authority of one court represented by the staff courts (Aref & Rasheed, 2017).

2. The Effect of the Staff Court on the Employees' Protection

Undoubtedly, the Staff Court has an important and significant role in protecting the public employee. This is evidenced by the court's jurisdiction in considering cases relating to the rights of the public employee or those relating to disciplinary punishments imposed by the administrative authorities on the public employee. Hence, the court has the power to cancel all illegal decisions against the public employee involving a violation of his rights, as well as decisions of disciplinary punishments involving violation of the law or abuse of authority. Thus, the court has the power to revoke all these decisions and compensate for them (Al-Jobori, 2009).

This includes the decision of the Disciplinary Council, which stated: Upon investigation and discussion, it is found that the plaintiff is an educational specialist in the General Directorate of Education of Dhi Qar, which belongs to the first defendant. The defendant has issued the ministerial order no. (4083) on 26 September 2006. The decision of the Supreme National Authority of de-Ba'athification no. (2) on 14 September 2003 has specified the special positions and liability that may not be granted to a member of division and above with a

special degree of profession from the general director and above or its equivalent of counselors and experts from the previous regime. The educational supervisor or specialist is not among these professions; therefore, the defendant's change of the plaintiff's title from an educational specialist to a teacher has no basis in the law.

Based on above, the Council decided by agreement to cancel the defendant's decision (Decision of the General Disciplinary Council No. 442/Discipline/2006 on 28/12/2006; decisions and opinions of the State Consultative Council for 2006). This decision demonstrates the role of the Staff Court in protecting the public employee. The administration has issued a decision to exempt the employee from his job and reassign him a teacher based on the public interest. This case is part of the case concerning the rights of the public employee, which is considered by the staff court. Changing the employee's job in the previous case is done according to the letter of the De-Ba'athification Committee in the Governorate No. (990) on August 9, 2006. The law has specified the special positions and liability that may not be granted to a member of division and above with a special degree of profession. Since the educational specialist is not among the professions specified by the law, thus the decision is unlawful due to violating the regulations and the law, which requires its cancelation. Therefore, the court has cancelled it and reassigned the employee to his previous job.

The court's role is not only to preserve the rights of the employee, but also to supervise the administrative bodies when issuing appointment decisions. This includes its decision that there is no legal basis for the defendant's refusal to appoint the plaintiff after satisfying all the legal requirements. In this concern, the argument of the attorney of defendant (the Minister of Foreign Affairs) that appointing the plaintiff arranges financial burdens on the State's treasury has no basis in the law. Consequently, the court has decided to oblige the defendant (the Minister of Foreign Affairs) to appoint the plaintiff (Ma'ad Abdullah Ahmed) in the Ministry of Foreign Affairs (Decision of the Staff Court, Baghdad, No. 178/2019 on 2/6/2019).

Moreover, its role is not only limited to the censorship of the legality, but also has the authority to properly control the disciplinary punishments imposed on the public employee and the adequacy of the punishment applied to the offence committed by the public employee. This includes the decision of the staff court whereby the administrative order no. (739) is issued on 9/4/2012, stipulating dismissal from the position for submitting a forged certificate at the time of appointment. She has been informed on 24/4 2012 and claimed that the issue in question is contrary to the provisions of Article (62) of the Civil Service Act No. 24 of 1960 because it is issued by another authority and that she has been first appointed in (1989) based on the intermediate certificate. Then, she claims that she has obtained a high school certificate in 2010 not 2005; so, she requested the defendant to plead and cancel the

order of her dismissal and reassign her to her job (Decision No. 63/2014 40/ the Staff Court / Cassation /2014, published on the website of the Iraqi Ministry of Justice: <https://www.moj.gov.iq/view.1488/>).

In this case, the court has the authority to consider the adequacy of the punishment imposed by the administrative body since the administrative body must apply a punishment commensurate with the disciplinary violation. In case if there is no proportion between the violation and the disciplinary punishment, this punishment is considered to be an abuse of power which requires its cancelation. Hence, the court shall assess all circumstances of the incident and its conditions and has the authority to cancel the penalty decision if it concludes that it has the defect of exaggeration and lack of proportion between the fault and the severity of the punishment (Yusuf & Khudhair, 2017).

The Court also supervises the formalities to be followed for issuing disciplinary punishments against employees, given the important safeguards provided by these formalities for the employee that the administrative authority must follow; otherwise, its decision is unlawful for violating laws and regulations. This is emphasized in the provisions of the Staff Court, including that the objector objects to the administrative order No. (12973) on 7 April 2019, which is the executive order for the implementation of the dismissal penalty issued under the administrative order No. (22788) on 17/11/2018. The court has reviewed the questioning and its procedures and the order issued against the objector, and observed that the ministerial order on the dismissal of the objector is signed by the undersecretary and thus violates Article (8) of the State and Public Sector Employees Discipline Act No. 14 of 1991, which required the dismissal punishment to be issued by the competent minister. Thus, the decision in question has the defect of incompetent authority as being issued by a person who does not have this authority. Accordingly, the court has decided to cancel the contested decision (Decision of the Staff Court No. 2965/2016 on 16/12/2016 on Case No. 219/S/2016).

Consequently, this demonstrates the important role played by the Staff Court in Iraq as it has the authority to control the legality of the disciplinary decisions issued against the employee and the adequacy of the procedures for issuing these decisions to the law. In addition, it has the authority to assess the adequacy of punishment prescribed by the administrative bodies in case if the latter abuses its powers and exaggerates in determining the type of punishment. Moreover, it has the authority to consider cases related to the various rights of employee, and to cancel those decisions that have affected the rights of the public employee. At the same time, it is permissible to grant compensation, which is more guarantee for the appellant (Sherif, 2003).

Conclusion

In fact, assigning the public employee to a certain job makes him enjoy some rights and has some obligations and duties. This often exposes this employee to injustice or abuse by the administrative body. Since the administrative body has the authority to impose the disciplinary punishments on the employee, thus there should be an independent body to protect the employee from the abuse and injustice of the administration. This body is represented by the Staff Court, which is entitled the authority to defend the employees and protect their rights from any abuse by the administration. In brief, the most important findings of this research are:

1. The Iraqi legislator has entitled the Staff Court the general jurisdiction in the consideration of all disputes involving the public employee, while other disputes fall within the jurisdiction of the administrative courts.
2. The Iraqi legislator expands the jurisdiction of the Staff Court in relation to cases on the rights of the public employee regardless of the source of these rights from other laws or regulations in Iraq. On the other hand, the General Disciplinary Council is concerned with the consideration of cases on rights arising from the Civil Service Act No. (24) of 1960 as amended only.
3. The Staff Court exercises censorship of the legality of disciplinary punishments, as well as the adequacy of the sentence imposed to the offence committed by the public employee, thereby increasing the protections prescribed for the employee.
4. The authority of the Staff Court is not only to cancel the unlawful decision issued for the public employee, but also to determine the compensation. This means that it has the full judicial authority.

This study suggests the following recommendations:

1. The Iraqi legislator shall combine the texts on the public employee and the public service, whether those contained in the Civil Service Law No. 24 of 1960 as amended or those contained in the State and Public Sector Employee Discipline Act No. (14) of 1991 as amended, in one Act that covers the rights and duties of the employee, the conditions for having public job, and the penalties applied to the public employee.
2. The Iraqi legislator must combine all the amended Acts of the State Consultative Council Act No. (65) of 1979 and issue the State Council Act that includes all these scattered texts. This is because it is not reasonable to have more than five amendments to one Act.
3. The Iraqi legislator did not address the authority of the Staff Court that the implementation of the contested decision may be suspended temporarily until the case is decided. This could not guarantee the security of the public employee, especially in cases of dismissal or deduction of salary and other decisions that greatly affect the public

employee. Consequently, the authority of court to suspend the implementation must be stipulated by the legislator.

4. The Iraqi legislator must assign the disputes concerning the applications of public jobs or those that occur after the end of the career relationship to the Staff Court not to the administrative courts. Hence, the Staff Court can cover all the details concerning the public employee and the public service as well as to expand the protection assigned to the employees.
5. The competent administrative authorities must hold seminars and legal courses with public employees in the State continually so that they are always aware of all the legal changes and amendments related to their rights and career duties.
6. The number of Staff Court departments must be increased so that each province has more than one department specialized in dealing with such career disputes to be resolved quickly.



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