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### **Regulating the end of service gratuity in the unified pension law(An analytical study).**

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#### **Abstract:**

After being referred to retirement, the employee deserves financial rights called retirement rights, as they are among the most important privileges that the employee gets after the end of his employment service due to their importance in ensuring a decent level of pension that guarantees him and his family a decent life. These rights are represented by (retirement salary, retirement gratuity and end of service bonus) Civil service legislation and pension laws have regulated these rights and regulated them with legal texts that ensure that the employee obtains his pension rights in proportion to his employment service, and among those legislations is the Unified Pension Law No. 9 of 2014 amended.

#### **1- Introduction:**

State legislation, including Iraqi legislation, has regulated the retirement rights of the public employee, represented by the retirement salary, retirement award and end of service bonus, but granting these rights to the employee is not carried out in a single mechanism, but for each one there are specific conditions, including the condition of job service, so the employee whose service is (15) fifteen years So, more than he deserves the retirement pension. If it is less than the aforementioned period, then he deserves the retirement reward that is calculated according to a specific mechanism. As for the end of service bonus, the law stipulated for its entitlement that the employee has a job service of no less than (25) twenty five years, and this means that the end reward The service will not be granted to employees who are entitled to a retirement award.

The current Unified Retirement Law No. (9) of 2014 amended has regulated the end of service reward and defined the conditions for its entitlement, and in this way it addressed the deficiency and deficiency of the repealed unified retirement law No. (27) of 2006, although there are some special legislations such as the law on reward for faculty members and educational bodies. No. (12) of 2012 regulating the end of service gratuity, even if it did not explicitly name it.

## **2- Study design and procedures:**

We have relied in our study on the analytical approach, where we will explain the concept of the end-of-service reward and distinguish it from other pension rights and determine the method of calculating it and who are the people who are entitled to retirement rights, including the end-of-service reward with the income of the texts regulating these rights, analyzing them and determining their importance in ensuring the employee's pension rights with Explaining its shortcomings, and this enables us to suggest appropriate solutions to address the deficiencies to avoid their implications.

**3- Definition of end-of-service gratuity:** The service legislation and the previous retirement law No. (27) for the year 2006 did not define the end of service reward, but the current unified pension law No. (9) for the year 2014 as amended provided a definition for the end of service gratuity with the text on (end of service remuneration: it is An amount of money paid to the retired employee according to the law) (1- Fourteenth, 2014).

The law on reward for faculty members and educational bodies No. 12 of 2012 referred to the end of service reward, but he did not know it.

## **4- Distinguish between the end of service gratuity and other pension rights.**

The financial rights of the retired employee are represented in the salary, retirement gratuity and end of service gratuity, and for the purpose of knowing the difference between these pension rights, we will study them as follows:

### **4-1: Distinguishing between end of service indemnity and retirement pension:**

The Iraqi legislator defined in the Retirement Law No. (27) of 2006 abolishing the retirement pension as (the monthly salary that the employee is entitled to upon being referred to retirement under this law) (b-second-13, 2006), and the current Unified Pension Law No. (9) for the year 2014, he defined it as (the monthly salary the retired is entitled to) (1- Fifteenth / 2014).

The Egyptian legislator did not touch on the definition of the retirement salary (18-19-20, 1975), while the French legislator defined the concept of the retirement salary as (a personal financial allowance given to civil and military employees and their beneficiaries after their death, who are appointed according to the law, as a reward for them upon their exit from service) (p319, 1973, Piquemal).

On the level of jurisprudence, several definitions of the retirement pension have been provided, including (a monetary sum paid to the employee after the end of his employment service, or devolved to his beneficiaries after his death, in exchange for the sums deducted from his salary and the contributions of the state and public institutions) (Al-Sarkh, p409, 1973).

Another defined it as (a financial right that the employee deserves as soon as his employment service ends for one of the reasons for termination of service without that depending on the will of the management) (El-Desouki, 2011, p219), (Saleh, 2005, p71)

It was also known as (a monthly salary that the employee is entitled to upon the end of his service, when he fulfills certain conditions) (Abdul Majeed, 2011, p522).

As for the end of service gratuity, it is a sum of money paid to the employee when he is referred to retirement once, when its conditions are fulfilled.

From the above, it becomes clear to us that the retirement pension is paid to the retired employee every month, while the end of service gratuity is paid only once.

In order for the employee to be entitled to the retirement pension, he must have a service of no less than (15) years and that he has completed (45) forty-five years of his age, but it is an exception from the general rule. The law permits the employee's entitlement to the retirement pension even if the two conditions above are not met, in specific cases They are death, martyrdom, retirement for health reasons, and retired persons according to the provisions of Clauses (Second and Third) of Article (12) of the Unified Retirement Law No. (9) of 2014.

And in a ruling by the Federal Court of Cassation, in which it supported the decision of the Retirement Examination Committee, as it was stated (... that the pension service for the distinguished person is less than 15 years old and thus he is not entitled to the pension ....) (Decision, 579,2011, Al-Janabi, 2012, p25 ).

As for the end of service gratuity, for its entitlement, the employee must have service of no less than (25) twenty-five years.

It is clear to us that the end of service gratuity is not granted to the employee unless he has a service of no less than (25) twenty-five years, in contrast to the retirement salary, whose entitlement is required for the employee to have service of no less than (15) fifteen years.

#### **4-2: Distinguish between end of service gratuity and retirement award:**

The revoked retirement law No. (27) for the year 2006 did not define the retirement reward, but the current unified pension law No. (9) for the year 2014 as amended defined it as (the alternative remuneration for the retirement salary) (14th -1, 2014).

A part of jurisprudence has tended to define the retirement reward as (a monetary sum that the employee receives as a whole following the end of his employment service) (Al-Taafi, 1984, p175), (Al-Tamawi, 1979, p476).

Another defined it as a monetary amount paid to the employee at one time when he is referred to retirement in case he is not entitled to the retirement pension (Al-Budairi and Al-Suwaidi, 2015, p117).

As for the end of service gratuity, it was previously defined as a sum of money paid to the employee upon referring him to retirement once, when its conditions are fulfilled.

The employee is entitled to a retirement reward if his service is less than (15) fifteen years and is calculated according to the following (the last job salary in the retirement service  $\times 2 \times$  the number of years of service) (b-first-22,2014), knowing that what is meant by the job salary here is the salary The one received by the employee during the retirement service without benefits (sixteenth -1,2014).

For example, if the employee had service for a period of (14 years) and the last salary he received was (300,000) thousand dinars, then the basic reward would be:

$300000 \times 2 \times 14 = 8400000$  eight million four hundred thousand dinars.

As for the end of service gratuity, for its entitlement, the employee must have service of no less than (25) twenty-five years.

From the above, it becomes clear to us that both remuneration is paid to the employee once when he is retired, but they differ in two respects, the first is the period of service, as the end of service gratuity requires that the employee have a service of no less than (25) twenty five years, while the retirement bonus is required The employee's service is less than (15). Fifteen years, and the second is that the employee can obtain the end of service gratuity along with the retirement salary if their conditions are fulfilled. However, in the pension award, the employee does not receive the end of service bonus nor the retirement salary because he did not fulfill the required condition for the service to deserve them.

### **5- Cases of entitlement to end-of-service benefits:**

Article (5) of the Law of the First Amendment to the Unified Pension Law No. (9) of 2014 referred to the end of service reward as it was mentioned in it (... Ninth:

**A-** He shall be paid to the referred to retirement and has a service of no less than (25) twenty-five years an end reward The service is calculated on the basis of the entire last salary and allowances multiplied by (12) and applies to cases from the date on which the amendment takes effect.

**B-** The provisions of Paragraph (A) of this Clause shall apply to the employee who deceased in service who has a retirement service of no less than (25) twenty-five years, and the amount of the end of service gratuity shall be disbursed to his deserving successor and includes the previous cases occurring after 1/1/2014) (5 , 2019).

Also, the Faculty Members Reward Law No. (12) of 2012 referred to the end-of-service reward even if it was not explicitly named, but the content of the legal article indicates that it is an end-of-service reward as it is mentioned in it: (Referrals to retirement from teaching and educational bodies covered by the provisions of the paragraph are granted (2) From Article (forty-five) of the Civil Service Law No. (24) for the year 1960, a reward equivalent to the salaries specified in the payroll attached to the Law on Salaries of State and Public Sector Employees No. (22) for the year 2008 for a period of (6) months with the last salary scale at the date of referral to Retirement) (1,2012). Some have considered it From the jurisprudence that the aforementioned reward is a special reward for the owners of teaching and educational bodies (Mujul and Talib, 2012, p109), and from our point of view we support the validity of the opinion before the enactment of the Unified Retirement Law No. (9) of 2014, but after the enforcement of the

aforementioned law, it cannot be considered a special reward because The law provides for end of service benefits.

Through the two texts above, we note that the unified retirement law is better for the retired employee than the teaching and educational staff members law than Law No. (12) of 2012, for the following reasons:

- 1- The amended Unified Retirement Law No. (9) of 2014 grants the remuneration for a period of (12) twelve months, while Law No. (12) of 2012 grants it for a period of (6) six months only.
- 2- The Unified Retirement Law No. (9) of 2014 amended calculates the remuneration on the basis of the entire salary and allowances, while Law No. (12) of 2012 calculates it on the basis of the salary established in Law No. (22) of 2008 and this law specifies the nominal salary only.

## **6- How to calculate the end of service gratuity:**

The Unified Retirement Law No. (9) for the year 2014 amending the mechanism for calculating the amount of the end-of-service gratuity for those covered by its provisions stated in it (it is paid to the retired person and has a service of no less than (25) twenty-five years. The end of service reward is calculated on the basis of the entire last salary and allowances multiplied by (12) It applies to cases from the effective date of the amendment) (IX-21,2014).

This means that the retired employee entitled to the end of service gratuity deserves the reward by multiplying his last salary (nominal salary + allowances) x 12, for example if the last salary he received is 725,000 thousand dinars, then the end of service reward is:

$$725000 \times 12 = 8700000 \text{ eight million seven hundred thousand dinars.}$$

## **7- Those entitled to end of service benefits:**

If the retired employee deserves the end-of-service bonus, then it is usually paid to him, but if the retired is deceased, then there are those who deserve the end-of-service gratuity. The Iraqi legislator called them (the successor) and identified them exclusively, as Article (5) of the First Amendment Law stipulated Unified retirement No. (9) for the year 2014 on (... Ninth: A- He is paid to the retired person and has a service of no less than (25) twenty-five years. End of service gratuity is calculated on the basis of the full last salary and allowances multiplied by (12) and applies to cases From the effective date of the amendment b. The provision of paragraph (a) of this clause shall apply to the deceased employee in service who has a pension service of no less than (25) twenty-five years and the amount of the end of service gratuity shall be disbursed to his deserving successor and includes the previous cases occurring after 1/1 / 2014) (5,2019).

With reference to the amended Unified Retirement Law No. 9 of 2014, we find that the successor has been defined as (the family members of the employee or retired who succeed him upon his death in accordance with the provisions of this law or any other law) (Twenty-first -1,2014).

And define the successor as:

### **1- The husband or wives.**

### **2- Son.**

**C - the girl.**

**D - the mother.**

**E - fr.**

**F- A brother or sister if the deceased was single and his parents died.**

Then a new paragraph was added under Article (17) of the First Amendment Law of the Unified Pension Law, in which it was stated (to be added to Clause (First) of the text of Article (26) of this law, and paragraph (g) of which: (G) The son or girl has needs. If he is incapacitated a disability (75%) and above, regardless of age) (17,2019).

This behavior is a sound position that the Iraqi legislator praises for not specifying it by a specific age, but we are up to the Iraqi legislator to define the disability rate as (75%) and it would have been better if he specified it as (50%). Therefore, we call on the Iraqi legislator to amend the above article and reduce the disability rate.

## **8- Conclusion:**

After we finished writing the research, we came to the following results and recommendations:

### **8-1 - First: Results:**

- 1- The end-of-service gratuity is considered one of the employee's retirement rights, after his retirement, it is granted upon the employee's completion of service of no less than (25) twenty-five years.
- 2- The end of service gratuity is granted for one time only, and thus it is similar to the retirement award, while it differs from the retirement salary that is granted to the retired employee periodically and continuously.
- 3- The end of service gratuity is calculated on the basis of the total of the last salary with the allowances multiplied by (x 12) months.
- 4- The Unified Retirement Law No. (9) for the year 2014 amended launched the name (the successor) to the beneficiaries of the end of service gratuity and identified them exclusively.

### **8-2- Second: Recommendations:**

- 1- We call on the Iraqi legislator to reduce the number of years of service that are required to be eligible for the end of service gratuity and make it (15) fifteen years instead of (25) twenty-five years, so that the employee whose service is less than (15) fifteen years is entitled to it with the retirement award instead. Who is eligible for the retirement bonus only.
- 2- We call on the Iraqi legislator to explicitly stipulate the abolition of Law No. (12) of 2012 relating to the remuneration of faculty members and educational bodies because the Unified Pension Law No. (9) of 2014 amended grants the retired employee better financial rights than Law No. (12) of 2012.

3- We call on the Iraqi legislator to calculate the part of the month by month if it is necessary for the employee to complete the legal age specified for obtaining pension rights.

4- We call on the legislator to set a time limit in which it determines the period in which the employee's retirement rights are spent after referring him to retirement, including the end of service reward, because the administrative procedures make the retired employee wait for months without obtaining it, so we see the necessity that the end of service reward be paid to him after A month from the date of referral to retirement.

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