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THE IMPACT OF DISCIPLINARY PUNISHMENT ON THE PUBLIC EMPLOYEE

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Abstract

The administrative apparatus in any country relies on public officials to conduct its administrative work, achieve its goals, and advance society through the provision of services represented by public utilities. In the performance of its duties, and therefore the public employee is considered the main tool that achieves the objectives of the administration by ensuring the achievement of the public interest and the smooth functioning and steadiness of public utilities. For that, the administration resorted to following a disciplinary system in the field of public office, which has a significant impact on the career path of the public employee, which includes what he must adhere to his job duties and abstain from all prohibitions specified by the legislation, which was keen to provide the largest amount of guarantees to limit the arbitrariness of the administration. In using its powers to punish the employee, which is at the same time an essential step and a tool taken by the administration in the face of the public employee who violates his job duties or deviates from their requirements.

Keywords: PUNISHMENT, PUBLIC EMPLOYEE

Introduction

The disciplinary offense committed by the public employee works to disrupt his career path by exposing him to the disciplinary penalty imposed by the laws and instructions as a result of his violation of his job duties and requirements, which focus on his legal position, which determines his grade, bonuses, promotion, salaries and allowances, and which is affected by the disciplinary or disciplinary punishments imposed on him because of the violation he commits.

The public employee is subject to disciplinary accountability since the issuance of his appointment decision, when he commits an administrative offense. Whether it was light or serious, since the decision to appoint him was issued by the competent authority, and jurisprudence indicates that the employee can be held disciplinarily accountable for the violations issued by him despite the fact that his appointment decision is invalid, and even if he committed the administrative violation outside official working hours.

Research Objectives

This research seeks to clarify the following:

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- 1- The concept of disciplinary punishment.
- 2- Define disciplinary punishment
- 3- The relationship between disciplinary punishment and criminal punishment.
- 4- Administrative investigation is a means of imposing disciplinary punishment.

Research Methodology

During the research, I followed the descriptive-analytical approach by presenting disciplinary punishments, defining them with an analysis of the relationship between disciplinary punishments and criminal punishments, and the management method in imposing punishments through administrative investigation, and through the use of legal studies and books that exposed the impact of disciplinary punishments on the legal position of the public employee.

Research Plan

The research was divided into an introductory topic and two sections as follows:

Introductory Topic

The Concept of Disciplinary Punishment.

The First Topic

Definition of Disciplinary Punishments and their Relationship to Penal Punishments.

The First Requirement

Definition of disciplinary Punishments.

The Second Requirement

Relationship between Disciplinary Punishments and Penal Punishments.

The Second Topic

The legal effect of disciplinary Punishments and the authority that imposes them.

The First Requirement

The Legal Effect of Disciplinary Punishments.

The Second Requirement

The Authority that Imposes Disciplinary Punishments.

Conclusion

References

Introductory Topic

The Concept of Disciplinary Punishment

Disciplinary laws are the general framework for determining the punishments that are imposed on employees when they violate the provisions of the public office. They have been keen to arrange the punishments in a gradual manner, specifying their types and effects, and what the administration has to do as the competent authority to practice disciplinary measures, until it chooses the punishment to be imposed on the violating employee, which must be imposed. It should be commensurate with the facts attributed to him, as a violation, in terms of gravity and damage, and not be marred by exaggeration or hyperbole. Where the administration must choose from the punishments that are necessary to confront the violation, and not by exceeding these controls would lead to tyranny and transgression that should be rejected. The amended State and Public Sector Employees Discipline Law No. 14 of 1991, as amended, referred to the punishments included in the law that may be imposed on the employee. It is very heavy and oppressive for the employee, but it exceeds it to include other members of his family and those who support them legally and legally, and that the dismissal penalty and the dismissal penalty, which may be more violent in their effects than what can be caused by the punitive punishment, so such punishments and their consequences must be known. It is referred to the law to define, describe, and organize its provisions so that its rules are general and abstract and are not left to the administration and its own considerations, interests, or personal whims, as long as the legislator is the one who defines the violation and its pillars.

The First Topic

Definition of Disciplinary Punishments and their Relationship to Penal Punishments

The employee's breach of his job duties, which would raise his disciplinary responsibility, and his act could raise a criminal or civil liability. The authorities concerned with imposing punishments shall determine the illegal acts attributed to the employee and assess the appropriate penalty. Before talking about the relationship between disciplinary punishments and penal punishments, we will discuss some of the jurisprudential opinions that defined disciplinary punishment, and therefore we will talk in the first requirement the definition of disciplinary punishment, and in the second requirement we will mention the relationship between disciplinary punishments and penal punishments.

The First Requirement

Definition of Disciplinary Punishments

Disciplinary Punishments

Disciplinary punishments, as called by the Iraqi legislator, represent the penalty for breach of job duties. These punishments are imposed on the perpetrators of disciplinary offenses, and they are

limited and cannot be bypassed and other punishments imposed. The disciplinary punishment is the main weapon by which the administrative authority can get employees to perform their duties properly and satisfactorily. These punishments are multiple, and their divisions have multiplied, so some jurists went to divide them into two types, purely disciplinary punishments, and disciplinary punishments that affect the job. While another side of the jurists went to divide it into three categories: moral punishments, punishments that affect the advantages of the job, and punishments that are necessary for the job itself.

The laws dealing with employment affairs did not define disciplinary punishments. Rather, the task of the legislator was limited to listing disciplinary punishments, indicating their types and their material and moral effects on the rights of the employee.

There are several definitions of disciplinary punishments, including "the punishment used against the employee's breach of duty" or "the professional punishment imposed on those who violated his job duty, or deviated from the requirements of the job and touched its dignity", or it is "the punitive measure specified in the text imposed by the disciplinary authority The competent employee who violates the duties of the position and obtains its advantages.

Or it is "the means of reform and correction in the field of public office, as it is a guarantee and a tool in the hands of the government that it uses to achieve the smooth and regular workflow in public facilities. Or" a penalty imposed on the employee whose responsibility for a disciplinary crime is proven.

The Second Requirement

Relationship between Disciplinary Punishments and Penal Punishments

Disciplinary Punishments are governed by the principle applied in the penal law, the principle (there is no punishment except by a written law) according to which the legislation specifies disciplinary Punishments exclusively, similar to the penal Punishments mentioned in the general penal code and special punitive laws, that the administration is committed to imposing the appropriate punishment on the violating employee and who Among the Punishments provided for in the law.

However, each violation does not have a specific penalty for it. Rather, the administration chooses a penalty for each violation committed by the employee, in proportion to its gravity and seriousness. The similarities between disciplinary Punishments and penal Punishments are that each of them is specified in the law exclusively, and neither of them may be inflicted on the violator unless the law stipulates them.

However, disciplinary Punishments differ from penal Punishments because their aim is to protect the job system and ensure the smooth and regular functioning of public facilities, while the aim of punitive punishments is to combat crime and guarantee the higher interests of the country, as well as disciplinary punishment affects the employee's material and moral job benefits and is of a professional nature. It is flexible and imposed by the administration for the employee's violation

of the duties and duties of his job and the requirements of the public interest, while the punitive punishment affects the person's financial responsibility, such as a fine, and his freedom, as in the penalty of imprisonment and imprisonment, and it is imposed by the competent courts in application of the principle of judicial Punishments, and disciplinary punishments apply to everyone who violates the duties of his job to whom it applies The description of a public servant, while the penal punishment is imposed on all members of society who are linked to the country by nationality in application of the principle of personal or comprehensive jurisdiction, or everyone residing on its territory in application of the principle of territorial jurisdiction of the Penal Code.

The Second Topic

Legal Effect of Disciplinary Punishments and the Authority that Imposes Them

Disciplinary or disciplinary laws that deal with disciplining employees begin with light Punishments and end with severe Punishments. This is what legislators have followed, including the Iraqi legislator in Law No. (14) of 1991 in determining these Punishments and their legal effects. It is not correct to look at the employee's mistake in isolation from the mistakes of other employees that Contributed to the realization of the violation, and it is also not permissible to punish any employee unless it is proven that he committed a violation of the provisions of the law, and the employee may not be punished for an act that does not constitute a disciplinary punishment, and the general amnesty law does not apply to the disciplinary punishment unless it is an ancillary punishment or stipulates otherwise.

The authority that imposes disciplinary Punishments on a public employee who violates his job duties is the administration through the formation of investigative committees stipulated in (M / 10) of the Law on Disciplining State and Public Sector Employees No. 14 of 1991 as amended, which raises its recommendations to direct the specific punishment against the employee It shall not produce its effect except after the approval of the Chief Administrative Officer.

The First Requirement

The Legal Effect of Disciplinary Punishments

1st: Notice

The employee shall be notified in writing of the violation he committed and directing him to improve his job behavior. This penalty entails delaying the promotion or increase for a period of three months.

He urged the employee not to commit a violation in the future, otherwise the punishment will be more severe. This penalty in Iraq is imposed on all employees of their various job levels and of the various job grades specified under Civil Service Law No. (24) of 1960 as amended and the service rules and regulations in force in Iraq. It is also imposed on whoever occupies the position of general manager or above, and this penalty is one of the Punishments Light and consistent with the desired

objectives of the presidential system, which granted the administrative head the authority to impose punishment in order to achieve good stability and regularity of the public service, and the fact that the administration is the most capable of assessing the violation and estimating the punishment in order for the employee to perform his duties in the best way without the need to prolong procedures that are not consistent with the principle of effectiveness in such Punishments.

2nd: Warning

It is the second punishment stipulated in (M / 8 / Second) of the Law of Discipline of State and Public Sector Employees No. 14 of 1991 in force in Iraq, and this penalty is by notifying the employee in writing of the violation he committed and warning him against breaching his job duties in the future, and this penalty entails delaying the promotion or delay any increase for six months.

It is a more severe penalty than the penalty for drawing attention, because the legal effect resulting from it under Iraqi law is to delay the promotion or increase for a period of six months, and it is one of the final Punishments that may not be appealed, whether it is imposed on employees in general or on those who are in the position of general manager or above, and it is considered A warning is a kind of warning that is exercised against the erring employee and the serious effects that he may be exposed to in case of repeating the same or similar mistake.

The law did not specify the number of warnings that may be imposed on the employee when the violation is repeated, in contrast to the comparative legal systems, which permitted the imposition of this penalty once a year, or twice, after which it is necessary to impose a more severe penalty, which is the best in confronting the employee's repetition of disciplinary violations and deterring him when he knows that the violation The next sentence will be more severe, and this pours into the possibility of reforming him, not returning to the violation, preventing extravagance in violations, and preserving the continuation of the career progression of the public employee in the job ladder.

3rd: Pay Cut

This disciplinary punishment shall be by deducting the daily installment from the employee's salary for a period not exceeding ten days by a written order in which the violation committed by the employee and which necessitated the imposition of the penalty shall be mentioned, and it shall result in delaying the promotion or increase according to the following:

A- Five months in the event of cutting the salary for a period not exceeding five days.

B- One month for each day of cutting the salary in case the penalty period exceeds five days, according to (Article 8/Third) of the Amended State and Public Sector Employees Disciplinary Law No. 14 of 1991.

The legislator did not specify the maximum number of deductions from the salary, as the employee's violation may be repeated and result in the repetition of the aforementioned penalty,

which harms the financial position of the employee and his family members. However, the Egyptian legislator specified this penalty for cutting the salary not to exceed two months in one year according to (M / 80/3) of the Civil Servants Law in the State No. 47 of 1978, which stipulated that "the period of deduction from the salary per year may not exceed 60 days, whether the deduction penalty is imposed all at once or in installments, as well as the two Punishments mentioned in items (1, 2) of the second paragraph of the referred to article.

Therefore, it is preferable for the Iraqi legislator to specify the penalty for cutting the salary, provided that it does not exceed (60) sixty days. per year, as is the case with the Egyptian legislator. As for jurisprudence, it criticizes the penalty of cutting the salary because it is inconsistent with the principle of personal Punishments and the achievement of justice. year in most countries.

Also, the aforementioned penalty on the other hand may push the employee to commit other violations that may be more serious than the previous ones, in view of the lack of his sources of income and his need for money to compensate for the shortfall in his income as a result of decreasing his salary, so he resorts to bribery, embezzlement, fraud, or damage to public money and the public interest, and it may be an easy prey. For the corrupt and manipulators of public money, so it is necessary to determine the number of times this penalty is imposed, or to cancel it because it contradicts (the principle of personal punishment) because it involves a financial penalty that affects the employee's family because the salary is the main resource for the employee's family in facing the requirements of daily life.

If the employee is punished by decreasing his salary, he will inevitably be exposed to financial confusion. Some comparative laws have taken the abolition of this penalty, and this view is most likely because it is in the interest of the public employee and keeps his family from being affected by the violations committed by the employee, and the principle of (personal punishment) is achieved, and this view is supported by many scholars Law professors and researchers regarding disciplinary Punishments and their direct impact on the employee.

4th: Reprimand

The reprimand penalty is one of the severe Punishments that the legislator intends to rank disciplinary Punishments, and its impact is considered harsh on the employee, and it was stipulated in (Article / 8 / Fifth) of the Iraqi Disciplinary Code.

"The employee shall be notified in writing of the violation he committed and the reasons that made his behavior unsatisfactory, and he shall be required to avoid the violation and improve his job behavior. This penalty entails delaying the promotion or increase for a period of one year."

It is considered an important punishment as the administration tends to use it in grave and dangerous disciplinary violations committed by some employees in an attempt to deter them and prevent them from committing them in the future. and improving his job behavior, and this penalty entails delaying promotion or bonus for a period of one year.

5th: Pay Reduction

It is by deducting an amount from the employee's salary at a rate not exceeding (10%) of his monthly salary for a period of not less than six months and not more than two years. M / 8 / Fifth of the Law on Disciplining State Employees in force, and it is a penalty similar to the penalty of cutting the salary in that it focuses on the employee's salary, except that they differ in that the penalty for cutting the salary includes the entire salary, while the penalty for reducing the salary affects part of it and as a percentage, and so on In the effect of delaying promotion or bonus, the first one does not exceed ten months, while the second one is not less than six months and not more than two years, noting that the penalty for decreasing the salary includes the employee's nominal salary without the salary and allowances.

6th: Demotion

It is considered one of the most severe disciplinary Punishments when compared to the aforementioned Punishments, because it has a direct impact on the employee's job position, as it makes him in a lower grade directly following his grade, and he is not raised from it to the grade he had only when the specific conditions for promotion are completed again. And the penalty for lowering the degree is by a written order according to which the employee is notified of the act he committed and necessitated that he be punished with this penalty. This penalty:

A- For the employee who is subject to laws, regulations, rules or service instructions that adopt the system of financial grades and promotion, lowering the employee's salary to the minimum level of the grade directly below his grade and granting him the bonuses he received in the grade he was removed from (measured by the measure of the bonus determined in the grade he was transferred to) and returned to The salary he was receiving before his grade was demoted after serving three years from the date of imposing the penalty, with the period spent in his last salary being rotated before the penalty was imposed.

B- For the employee subject to laws, regulations, rules, or service instructions that take the increase system every two years, reduce two increases with the employee's salary and return to the salary that he was earning before his grade was demoted after spending three years from the date of imposing the penalty with rotating the period spent in his last salary before imposing The punishment.

C- For the employee who is subject to laws, regulations, rules or service instructions that adopt the annual increase system, reducing three annual increases from the employee's salary with rotating the period spent in his last salary before imposing the penalty.

7th: Dismissal from Work

The dismissal penalty is one of the disciplinary Punishments stipulated by many comparative laws and which the administration resorts to when the public employee commits a very serious violation for which he deserves this penalty, which is considered one of the most severe disciplinary

Punishments, and it was stipulated in (M / 8 / Seventh) of the Iraqi Disciplinary Code in force on That "dismissal - and the removal of the employee from the job is a period determined by the dismissal decision that includes the reasons that necessitated the imposition of the penalty on him as follows:

A - A period of not less than one year and not more than three years if the employee was punished with two of the following Punishments or one of them twice, and the third time, within five years from the date of imposing the first penalty, he commits an act that requires him to be punished with one of them:

1- Reprimand.

2- Pay Reduction.

3- Demotion.

The second type of dismissal that is imposed on the employee is not because he committed an administrative violation, but rather because he was sentenced to imprisonment or imprisonment for a crime he committed, and he is dismissed from his job for the period of his stay in prison, and this is what was stipulated in (M / 8 / Seventh).

B - The period of his stay in prison if he was sentenced to imprisonment or imprisonment for a crime that is not prejudicial to honor, starting from the date of issuance of the sentence against him.

8th: Exclusion

It is the final exclusion of the employee from the job, and therefore it is not permissible to appoint him again unless the employee is dismissed by the fault of the administration, in this case only he compensates for what he missed in the event that he started the job, noting that there are no justifications for reducing the dismissal penalty if the employee's actions indicate that he is not fit For the public service, and this is what distinguishes him from the dismissal according to which the employee is temporarily excluded from his job and may be employed upon its completion.

It is one of the most severe disciplinary Punishments that can be imposed on an employee when he commits a disciplinary crime, when it is proved that he has committed a serious sin or that his remaining in the service of the state has become harmful to the public interest because of his disgraceful behavior or his rebellion against his superiors who do not accept reform or because of his repeated negligence. The disciplinary penalty of dismissal may be imposed against the employee except based on an administrative investigation, and the employee convicted of a misdemeanor may be dismissed unless the judgment constitutes a presumption that keeping the employee in the service of the state is harmful to the public interest, as well as sentencing the employee to a penalty for a crime against honor does not entail his dismissal from the job unless This crime constitutes a presumption that his survival is harmful to the public interest as well, noting that the general

amnesty law does not apply to the dismissal penalty unless the penalty is consequential, or the amnesty law stipulates that it applies to disciplinary Punishments, and the general amnesty does not apply to the dismissal penalty imposed by the minister on the recommendation of a committee Investigative, and in the event that the decision to dismiss the employee is canceled by the judiciary for management, an investigation committee is formed in accordance with the law against the dismissed employee after canceling the penalty of his dismissal from the judiciary because it was not issued based on the recommendations of an investigative committee formed according to the law, and the employee does not deserve compensation for his dismissal from the job if The cancellation of the isolation was due to a formal reason.

It is noted that these phrases are generalized and generalized, and some believe that this is justified, as it is not possible to specify administrative errors in a specific way, so it is inevitable that their income be limited to a description, not a limitation of naming and identification. This is the most important aspect of the difference between administrative crime and criminal crime, since the latter is governed by the principle of no crime or punishment except by a legal text.

The Second Requirement

The Authority that Imposes Disciplinary Punishments

The state exercises its attached activity through its employees, as they are the state's tool to achieve its goals, and the public office enjoys the care of the legislators and jurists in various countries, and the role of the public servant is determined narrowly and broadly according to the economic and social philosophy of each country, so the state's activity is wide and its role is not limited to protecting internal and external security and resolving disputes Among individuals, and its carrying out some public works and its increased interference in various economic and social fields, necessarily led to an increase in the number of employees and the state's interest in organizing the administrative apparatus, and therefore the public office has its own system that defines the rights and duties of public employees and the conditions for their joining the job and also their disciplinary accountability. The disciplinary system aims to ensure the proper functioning of public facilities, by punishing workers in the administrative apparatus for their job errors.

In addition to imposing Punishments that are different in nature from criminal Punishments, since disciplinary and disciplinary Punishments undermine the employees' job positions, while criminal Punishments are represented by imposing negative or freedom-restricting Punishments. Disciplinary crimes and disciplinary Punishments are limited to employees, as they are crimes and Punishments pertaining to a specific group in society who hold the capacity of an employee and are linked by the bond of public office.

It includes employees and others, and the decision issued with the disciplinary penalty is an administrative decision in terms of formality and is issued by the administrative authority in which the violating employee works, and it is not considered a judicial ruling, which is appealed before

the administrative courts through the administrative courts that are established for this purpose. Disciplinary Punishments are imposed by the administrative authorities that have the power or competence to impose them, represented by (the minister, the undersecretary, the governor, the general manager, or any other employee authorized by the minister to impose the Punishments stipulated in the law). Article (10) of the Employee Discipline Law specified The Iraqi state has a mechanism for imposing disciplinary Punishments on the violating employee, which stipulates that (the minister or the head of the department must form an investigative committee consisting of a chairman and two experienced members, provided that one of them has a preliminary university degree in law so that the committee undertakes a written investigation with the referred violating employee In order to perform this task, it may hear and write down the statements of the employee and witnesses, review all documents and data that it deems necessary to review, and write a report proving the actions it has taken and what it has heard with its reasoning recommendations, either by not questioning the employee and closing the investigation, or by imposing one of Punishments stipulated in this law) and the minutes are submitted to the head of the department for the purpose of approving the minutes and then issuing the administrative order in the event that the penalty is imposed on the violating employee, but if the committee finds that the employee referred to it acted.

Conclusion

Disciplinary Punishments were closely related to the public employee's violation of his job duties and requirements, and these Punishments were specified exclusively by the disciplinary laws for state employees, so it is not permissible to impose others on the employee, except that the disciplinary violations committed by the public employee cannot be limited or determined, and the legislator leaves the responsibility for that to the discretionary authority to manage.

Results

- 1- Disciplinary Punishments are of a financial and preventive nature that affect the employee's material and moral benefits, and they do not restrict the employee's freedom and do not affect his body.
- 2- Disciplinary Punishments are subject to the principle of penal legality, and the legislator has specified them exclusively.
- 3- Punishments imposed by the administrative authority on administrative violations, but they are subject to the supervision of the administrative judiciary, but the supervision takes place after imposing the punishment, not before it.
- 4- Disciplinary Punishments are designed to deal with acts and behaviors that violate the law but affect non-essential or essential interests.
- 5- Disciplinary Punishments are issued by the administrative authority in the form of an administrative decision due to a violation in the practice of administrative activity.

6- Disciplinary Punishments shall be deterrent Punishments for every behavior issued by a public employee that affects a public interest that affects the proper functioning of a public facility that the administration was responsible for organizing, or affects the administration itself.

7- Disciplinary Punishments are consistent with penal Punishments, as they were mentioned exclusively, and they differ in that the disciplinary offenses were not specified by the legislator, as he did with crimes, and the matter was left to the administrative authority. Disciplinary Punishments are imposed by the administration, and penal Punishments are issued by the competent courts.

8- The legislator mentioned the right of the employee who is subject to the disciplinary punishment to complain about it, but limited it to the same authority that issues the punishment, which is the administration.

Recommendations

1- The need to identify the actions and behaviors of the public servant that represent a disciplinary violation and that expose him to disciplinary Punishments.

2- Reducing the disciplinary Punishments mentioned in the disciplinary laws, especially the Punishments (Demotion, Dismissal, and Exclusion), as they represent harsh and severe Punishments that do not affect the merits of the public employee alone, but rather extend to his family and its daily strength.

3- Restricting the authority of the administration to impose disciplinary Punishments on the public employee and not leaving it absolute in determining the violation and imposing the punishment, by creating an entity or committee that considers the punishment recommended by the investigation committee before it is approved by the administration and that it is impartial.

4- The administration holds seminars and lectures to explain and clarify the duties of the public employee and informs them of the Punishments imposed on those who violate these duties, and prepares workshops that develop and develop the capabilities of employees, and improve their material and moral conditions.

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