

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D23348
W/prt

_____AD3d_____

Argued - April 23, 2009

A. GAIL PRUDENTI, P.J.
HOWARD MILLER
RANDALL T. ENG
ARIEL E. BELEN, JJ.

2008-08313

DECISION & ORDER

In the Matter of Richard Lazzari, respondent,
v Town of Eastchester, et al., appellants.

(Index No. 7628/08)

Vincent Toomey, Lake Success, N.Y. (Christine A. Gaeta of counsel), for appellants.

James M. Rose, White Plains, N.Y., for respondent.

In a proceeding pursuant to CPLR article 78 to compel the Town of Eastchester and the Town Board of the Town of Eastchester to reinstate the petitioner to his former positions as assistant building inspector and deputy building inspector of the Town of Eastchester, pursuant to Civil Service Law § 71, the appeal is from a judgment of the Supreme Court, Westchester County (Cacace, J.), dated August 1, 2008, which granted the petition and directed that the petitioner be reinstated.

ORDERED that the judgment is reversed, on the law, with costs, and the matter is remitted to the Supreme Court, Westchester County, for the joinder of the Westchester County Department of Human Resources as a respondent in this proceeding, without prejudice to its right to assert any defenses or affirmative defenses, the service of the notice of petition and petition by the petitioner upon the Westchester County Department of Human Resources within 30 days after service upon him of a copy of this decision and order, the service by the Westchester County Department of Human Resources of an answer or motion directed to the petition, and a new determination thereafter of the petition, in accordance herewith.

Under the circumstances presented, we agree with the appellants that the Westchester County Department of Human Resources (hereinafter the County DHR) is a necessary party to this

May 26, 2009

Page 1.

MATTER OF LAZZARI v TOWN OF EASTCHESTER

proceeding (CPLR 1001[a]), and the Supreme Court should have ordered it joined (CPLR 1001[b]). Accordingly, the County DHR must be joined as a respondent without prejudice to its right to assert any defenses or affirmative defenses and the petitioner must serve the notice of petition and petition upon it within 30 days after service upon him of a copy of this decision and order (*see Windy Ridge Farm v Assessor of Town of Shandaken*, 11 NY3d 725, 727; *Matter of Romeo v New York State Dept. of Educ.*, 41 AD3d 1102, 1105). Thus, we remit the matter to the Supreme Court, Westchester County, for a new determination of the petition, with the participation of the County DHR.

PRUDENTI, P.J., MILLER, ENG and BELEN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court