

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

507

CA 08-02129

PRESENT: SMITH, J.P., FAHEY, PERADOTTO, CARNI, AND GORSKI, JJ.

---

IN THE MATTER OF JANET EVELYN DORSEY,  
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

HERKIMER COUNTY COMMUNITY COLLEGE,  
RESPONDENT-APPELLANT.

---

ROEMER WALLENS & MINEAUX, LLP, ALBANY (EARL T. REDDING OF COUNSEL),  
FOR RESPONDENT-APPELLANT.

DAVID G. GOLDBAS, UTICA, FOR PETITIONER-RESPONDENT.

---

Appeal from a judgment (denominated order) of the Supreme Court, Herkimer County (Michael E. Daley, J.), entered July 29, 2008 in a proceeding pursuant to CPLR article 78. The judgment, inter alia, denied the motion of respondent to dismiss the petition.

It is hereby ORDERED that the judgment so appealed from is unanimously reversed on the law without costs, the motion is granted and the petition is dismissed.

Memorandum: Petitioner, an employee of respondent, commenced this proceeding seeking, inter alia, a hearing with respect to allegations of misconduct asserted against her by another employee and seeking to annul the suspension of her employment. Petitioner was not a permanent employee of respondent but, rather, she worked pursuant to a series of annual and biyearly appointments. The reappointment of petitioner was based on an evaluation of her performance, and respondent neither guaranteed employment for the duration of the terms nor relinquished its right to terminate petitioner. We agree with respondent that Supreme Court erred in denying its motion to dismiss the petition. Here, petitioner was in effect an at-will employee, and respondent was entitled to suspend or dismiss her from employment without a hearing and without a statement of reasons in the absence of proof that the suspension or dismissal was for a constitutionally impermissible purpose or contrary to statutory or decisional law (see *Murphy v American Home Prods. Corp.*, 58 NY2d 293, 305; *Matter of Oset v Can/Am Youth Servs.*, 212 AD2d 887, 888). Petitioner made no such showing here, and there is no provision in respondent's employee handbook that prohibits respondent from suspending an employee without first conducting a hearing (see generally *Matter of Oset*, 212 AD2d at 888).

In view of our determination, we do not address respondent's remaining contentions.

Entered: April 24, 2009

Patricia L. Morgan  
Deputy Clerk of the Court