

Gilgoff v New York City Dept. of Educ.

2024 NY Slip Op 31270(U)

April 11, 2024

Supreme Court, New York County

Docket Number: Index No. 152583/2020

Judge: Arlene P. Bluth

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH **PART** **14**

Justice

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JOSHUA GILGOFF,

Petitioner,

- v -

NEW YORK CITY DEPARTMENT OF EDUCATION;
and RICHARD CARRANZA, CHANCELLOR of NEW
YORK CITY DEPARTMENT OF EDUCATION,
Respondents.

**DECISION + ORDER ON
MOTION**

INDEX NO. 152583/2020

MOTION DATE 04/10/2024¹

MOTION SEQ. NO. 001

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 16, 17
were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

The petition to annul respondents’ determination that petitioner resigned as of March 1, 2019 with pending charges is denied.

Background

Petitioner contends that he worked as a tenured special education teacher for the Department of Education (“DOE”) starting in 2005. He complains that beginning in October 2018, he received at least 4 disciplinary letters in his file. Petitioner characterizes this as part of a campaign of harassment by the principal. He claims that in February 2019, he decided to resign from his position and figured that he would be able to return again within five years as he had done before without issue.

¹ Although this proceeding was only reassigned to the undersigned this week, the Court is well aware that this proceeding has been pending for far too long. The Court apologizes, on behalf of the Court system, for the inexplicable delay in the resolution of this proceeding.

Petitioner explains that he attempted to work for a non-DOE education agency vendor and was required to complete a background check for this position with DOE's Office of Personnel Investigation ("OPI"). He insists that he soon learned that he had pending Section 3020-a charges when he resigned and so he was denied security clearance. Petitioner argues that he would have never resigned from his position had he known about these pending charges and he insists he was never told that his resignation was irrevocable. Petitioner wants the irrevocable resignation code as well as the pending 3020-a charges both removed from his employment record.

In opposition, respondents contend that this Court lacks subject matter jurisdiction because a resignation does not implicate any administrative determination. They point out that they substantiated two investigations into petitioner, including that petitioner picked up a student by his arm and put him in a chair as well as cursing at a student. Respondents observe that petitioner received three letters to his file between 2013 and 2015 for excessive absences and unprofessional behavior towards food service workers, as well as an ineffective rating for the 2016-2017 school year. Respondents emphasize that petitioner failed to disclose his substantiated investigations and the ineffective rating in his background questionnaire for the security clearance.

In reply, petitioner claims that respondents violated protocol by not utilizing the required progressive discipline and that the abuse and hostility he received caused him to resign. He admits that he attended an OPI investigation hearing in October 2019 regarding his clearance for the aforementioned job and that he was told about the potential charges at this meeting. He demands back pay and "other monetary damages" based on his inability to work for the DOE and DOE's vendors.

Discussion

“It is a long-standing, well-established standard that the judicial review of an administrative determination is limited to whether such determination was arbitrary or capricious or without a rational basis in the administrative record and once it has been determined that an agency's conclusion has a sound basis in reason, the judicial function is at an end. Indeed, the determination of an agency, acting pursuant to its authority and within the orbit of its expertise, is entitled to deference and even if different conclusions could be reached as a result of conflicting evidence, a court may not substitute its judgment for that of the agency when the agency's determination is supported by the record” (*Partnership 92 LP v State Div. of Hous. and Community Renewal*, 46 AD3d 425, 428-29 [1st Dept 2007], *affd* 11 NY3d 859 [2008] [internal quotations and citations omitted]).

As an initial matter, the Court observes that petitioner's requested relief is a bit unclear. He wants a designation that he “irrevocably” resigned to be removed from his employment file but he does not allege that he attempted to regain his employment with DOE. Rather, in this Court's view, this proceeding is simply about whether respondents' denial of petitioner's request for a security clearance was rational (NYSCEF Doc. No. 6). The Court finds that this denial was entirely rational.

The fact is that this decision was made, at least in part, on the ground that petitioner failed to disclose prior substantiated misconduct reports and his ineffective rating on the background questionnaire despite direct questions asking for this information (*id.* at 3). That is, OPI rationally declined to grant petitioner's request for a security clearance where he seemingly chose to omit unflattering information. This Court cannot direct respondents to grant a security clearance under these circumstances.

Moreover, OPI took issue with the resignation email petitioner sent in February 2019 (NYSCEF Doc. No. 13). Petitioner stated in this email that “It is a shame when a good teacher is gunned down by bad administration, but that is the climate of hostility at SULA. I for one will no longer be taking the abuse and wish you all the best in surviving it” (*id.*). Respondents viewed the email as aggressive and inappropriate (NYSCEF Doc. No. 6 at 3). While this Court makes no independent assessment of this email, respondents were entitled to express their displeasure with it and cite it as part of petitioner’s background check. In other words, petitioner made a decision to send a resignation email to the entire staff and thereby took a risk that it would be held against him.

And while the Court observes that petitioner is correct to point out that the mere possibility that charges might have been brought against him is not dispositive of anything, the fact is that petitioner was certainly aware of some of the alleged misconduct at issue. He signed a copy of a letter dated November 5, 2018 in which the assistant principal found that he had verbally abused a student (NYSCEF Doc. No. 11). It was rational for respondents to cite this alleged misconduct, even though there were no charges filed (as petitioner resigned), as part of its analysis on petitioner’s security clearance. This letter specifically noted that “the above-described conduct may lead to further disciplinary action, including disciplinary charges that could lead to the termination of your employment” (*id.*). Petitioner cannot therefore express surprise that respondents might rely on these events when evaluating petitioner for a security clearance.

Summary


The Court observes that petitioner appears to lack standing for much of his requested relief. He does not claim that he demanded his job back, which would implicate the designation

of his resignation as irrevocable and the misconduct present in possible charges. Put another way, petitioner did not cite a basis upon which he is entitled to an order scrubbing his employment file given that he resigned and, apparently, has not sought to regain his position. The only “agency action” at issue here is the denial of his request for security clearance, a determination that this Court finds to be rational.

Petitioner is not entitled to unspecified monetary damages from his inability to gain employment as he did not meet his burden to show his entitlement to these damages. Petitioner did offer any details about the various employment positions he was unable to secure as a result of respondents’ actions (other than the refusal to give security clearance, which was rational).

Accordingly, it is hereby

ADJUDGED that the petition is denied and this proceeding is dismissed without costs or disbursements.

<p>4/11/2024</p> <hr/> <p>DATE</p>	 <hr/> <p>ARLENE P. BLUTH, J.S.C.</p>	
<p>CHECK ONE:</p>	<p><input checked="" type="checkbox"/> CASE DISPOSED</p>	<p><input type="checkbox"/> NON-FINAL DISPOSITION</p>
<p>APPLICATION:</p>	<p><input type="checkbox"/> GRANTED</p>	<p><input type="checkbox"/> GRANTED IN PART</p>
<p>CHECK IF APPROPRIATE:</p>	<p><input type="checkbox"/> SETTLE ORDER</p>	<p><input type="checkbox"/> SUBMIT ORDER</p>
	<p><input checked="" type="checkbox"/> DENIED</p>	<p><input type="checkbox"/> OTHER</p>
	<p><input type="checkbox"/> INCLUDES TRANSFER/REASSIGN</p>	<p><input type="checkbox"/> FIDUCIARY APPOINTMENT</p>
		<p><input type="checkbox"/> REFERENCE</p>