

Ladson v New York City Board of Education

2006 NY Slip Op 30360(U)

January 11, 2006

Supreme Court, New York County

Docket Number:

Judge: Doris Ling-Cohan

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

PRESENT: Hon. Dennis Ling-Coha
Justice

PART 62

Index Number : 401765/2005

LADSON, LULA

vs

BOARD OF EDUCATION

Sequence Number : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

ad on this motion to/for Article 78 proceeding

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

1, 2

Answering Affidavits — Exhibits _____

3

Replying Affidavits _____

4

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

is denied & dismissed in a Memorandum decision.

*Article 78 proceeding
and notice of entry
appear in person at the Judgment Clerk's Desk (Room 1418).*

UNFILED JUDGMENT
This Judgment is based on the County Clerk's
Obtain entry, Counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room 1418).
To

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: Lula

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 62

-----X

LULA LADSON,

Petitioner,

Index No. 401765/05

-against-

NEW YORK CITY BOARD OF EDUCATION,
Respondent.

-----X

LING-COHAN, J.:

This is an Article 78 proceeding brought by petitioner Lula Ladson, a former probationary payroll secretary employed by respondent, New York City Board of Education (the Board). In her Petition, verified May 27, 2005, petitioner claims that respondent's decision to discontinue her probationary services and deny the appeal of her unsatisfactory 2002-2003 performance rating should be reversed on the ground that the Board's actions were arbitrary, capricious or otherwise wrongful.

The Board contends that any claims Ladson has relating to the July 20, 2003 termination of her probationary services are time-barred by the four-month statute of limitations applicable to Article 78 proceedings. The Board further contends that the decisions rating Ladson's performance as unsatisfactory and terminating her probationary services were supported by ample evidence in the record - as evidenced by the three audits undertaken of Ladson's performance - and were not arbitrary or capricious in any respect. Lastly, the Board contends that Ladson failed to establish a violation of her due process rights. Rather, as a probationary employee, the Board submits she had no property right to her position, and, additionally, that she was afforded a full and fair review of the decisions rating her performance unsatisfactory and terminating her probationary

services.

BACKGROUND

On or about February 13, 2001, Ladson was granted a conditional license from the Board to serve as a payroll secretary for a three-year probationary period. Ladson received a satisfactory rating on her Annual Professional Performance Review and Report on Probationary Service of School Secretary (Performance Evaluation) for the 2001-2002 period. During the 2002-2003 school year, three audits of Ladson's performance were undertaken. In each instance, her performance was considered inadequate. Conferences were held with Ladson to discuss the results of each of these audits. On June 5, 2003, Assistant Superintendent Peter Ianniello held a conference with Ladson and her union leader, discussing the findings from the third conference, and sent a letter to Ladson the same day, wherein Ladson was advised that her performance was "clearly a dereliction of [her] duty as a secretary assigned to complete payroll," that she may be rated unsatisfactory, and that her probation may be discontinued.

Ladson was issued an unsatisfactory rating on her 2002-2003 Performance Evaluation, dated June 20, 2003. The 2002-2003 Performance Evaluation indicated unsatisfactory performance in eleven different areas.

By letter, dated June 20, 2003, Ladson was notified that, on July 20, 2003, Supervising Superintendent of the Chancellor's District, Sandra Kase, Ed.D., would review and consider whether her services would be discontinued as of the close of business on July 20, 2003. By letter, dated July 20, 2003, Ladson was notified that Supervising Superintendent Kase reaffirmed the discontinuance of her probationary service, effective the end of that day, July 20, 2003. The July 20 2003 Letter states "[t]his is to inform you I

reaffirm your Discontinuance of Probationary Service effective the close of business on July 20, 2003.”¹

Pursuant to section 5.3.4 of the Board's by-laws² and Ladson's union contract, Ladson sought a review of the decisions to discontinue her probationary service and the grant of the unsatisfactory rating in the 2002-2003 Performance Evaluation. On March 18, 2004, a hearing was held by the Chancellor's Review Committee (CRC), comprised of a three-member panel.³ Ladson was represented at the hearing by a union advisor. Ladson gave testimony and presented evidence in support of her position; her union advisor cross-examined the Board's witnesses and made a statement to the CRC on Ladson's behalf.

The CRC agreed that the services rendered by Ladson were unsatisfactory, but disagreed with the remedy of the discontinuation of Ladson's probationary service.⁴ Nevertheless, by letter, dated February 1, 2005, the Community School Superintendent, Jecrois Jean-Baptiste reaffirmed the decision giving Ladson an unsatisfactory rating and discontinuing her probationary service.

Ladson thereafter commenced this Article 78 proceeding seeking to vacate

¹ Ladson claims that she did not receive the July 20, 2003 letter until October 9, 2003.

² Section 5.3.4 of the Board of Education bylaws has been renumbered as Section 4.3.2 of the "By-laws of the Panel for Educational Policy of the Department of Education of the City School District of the City of New York"; however, the substance remains the same.

³ For an overview of the mechanics of a CRC hearing, see Von Gizycki v Levy (3 AD3d 572, 573-574 [2d Dept 2004]).

⁴ The Board did not send the CRC recommendation to Ladson.

the Board's termination of her probationary services and its issuance of an unsatisfactory rating, as embodied in the July 20, 2003 letter, and reaffirmed in the Jean-Baptiste decision of February 1, 2005. Ladson seeks reinstatement of her employment, and retroactive restoration of back pay and benefits. In the petition, Ladson asserts that the Board's actions were, among other things, arbitrary and capricious, an abuse of discretion, and otherwise unlawful.

The Board, in its Answer, verified August 11, 2005, denies any wrongdoing and asserts that: (1) the petition fails to state a cause of action (first defense); (2) the Board's actions were "legal, proper, reasonable, and in conformity with the Constitution and all applicable laws and regulations, and were neither arbitrary nor capricious" (second defense); (3) the conduct of the CRC proceedings was "lawful, proper and in conformity with the Constitution and Laws of the State of New York and afforded petitioner with due process" (third defense); (4) the Board's decision to terminate petitioner's services, and deny her appeal was "lawful, reasonable, and a proper exercise of discretion" (fourth defense); and (5) "[a]ll or part of the claims alleged [in the petition] are barred by the four-month statute of limitations" (fifth defense).

DISCUSSION

The Board contends that the petition should be denied and the proceeding dismissed because: (a) Ladson's claims regarding the July 20, 2003 termination of her probationary services are time-barred by the four-month statute of limitations; (b) the decisions rating Ladson's performance as unsatisfactory and terminating her probationary services were supported by ample evidence in the record (including the three audits undertaken of Ladson's performance), and that said decisions were neither arbitrary nor

capricious in any respect; and (c) Ladson, as a probationary employee, had no property right to her position, was afforded a full and fair review of the decisions in question, and failed to establish a violation of her due process rights.

It is well settled that the Board has the right to terminate a probationary employee at any time and for any reason, unless the employee establishes that the termination was for a constitutionally impermissible purpose, violative of a statute or done in bad faith (Matter of Frasier v Board of Educ. of the City School Dist. Of the City of New York, 71 NY2d 763, 765 [1988], citing Matter of Venes v Community School Board of Dist. 26, 43 NY2d 520, 525-526 [1978] [probationary employees have no property rights in their positions and may be terminated for almost any reason, or for no reason at all]).

An Article 78 proceeding must be commenced within four months after the determination to be reviewed becomes final and binding (see CPLR 217; Yarbough v Franco, 95 NY2d 342, 346 [2000]). An Article 78 proceeding challenging the termination of a probationary teacher must be brought within four months of the effective date of such termination (Matter of Johnson v Board of Educ. of City of New York, 291 AD2d 450 [2d Dept 2002]; Matter of Bonilla v Board of Educ. of City of New York, 285 AD2d 548, 549 [2d Dept 2001]; see also Matter of Frasier v Board of Educ. of the City School Dist. Of the City of New York, 71 NY2d 763, 765 [1988][termination of the by-laws of a probationary teacher final on effective date of termination; finality of termination not affected by subsequent review of termination]; Matter of De Milio v Borghard, 55 NY2d 216 [1982].

The review of a probationary employee's termination pursuant to section 5.3.4 does not extend or toll the four-month statute of limitations applicable to Article 78 proceedings (Matter of Schulman, supra; see also Matter of Frasier, supra, 71 NY2d at

767).

Here, by letter dated July 20, 2003, Ladson was notified of the decision terminating her probationary services. This letter is a final and binding decision. Even if Ladson did not receive this letter until October, 2003, as she claims, she nevertheless failed to commence this proceeding within four months of her alleged receipt, and her claim challenging the Board's termination of her probationary services, is thus time-barred (see Matter of Lipton v New York City Board of Educ., 284 AD2d 140 [1st Dept 2001]).

Ladson's assertion that the July 20, 2003 letter did not comply with Education Law § 3019-a is also time-barred because she failed to assert her alleged claim within four months of her receipt of said letter. Education Law § 3019-a ("Notice of termination of service by teachers") requires that written notice must be given by a school board to terminate the services of teachers during the probationary period at least 30 days before the effective date of termination. Accordingly, Education Law § 3019-a, by its terms, applies to probationary teachers, not to probationary secretaries.

However, to the extent she seeks review of the February 1, 2005 determination (which sustained the Board's issuance of the unsatisfactory rating in the 2002-2003 Performance Evaluation), this proceeding is timely commenced (see Matter of Johnson v Board of Educ., *supra*; Matter of Mateo v Board of Educ., *supra*; Matter of Bonilla v Board of Educ., *supra*). Thus:

Since a decision to terminate probationary employment is final and binding on the date the termination becomes effective, so much of the petition as challenged the termination and sought reinstatement is time barred (see Matter of Budijas v Board of Educ., 285 AD2d 549. However, as the respondents correctly concede, the petition was both timely and meritorious to the extent that it sought to annul the unsatisfactory rating (see Matter of Bonilla v Board of Educ., 285 AD2d 548; Matter of Mateo v Board of Educ.,

285 AD2d 552).

(Matter of Johnson v Board of Educ., supra, 291 AD2d at 450).

The proper standard for review of the February 1, 2005 determination is whether it was arbitrary or capricious or an abuse of discretion under CPLR 7803(3) (see Matter of Kaufman v. Anker, 42 NY2d 835 [1977]; Matter of Pell v Board of Educ., 34 NY2d 222 [1974]; Matter of Von Gizycki v Levy, supra). Under this standard, the determination must be upheld if it was founded on a rational basis in reason or fact (Matter of Pell v Board of Educ., supra 34 NY2d at 231), even if the court would have reached a different conclusion.

The record here demonstrates that Ladson's unsatisfactory rating was preceded by "numerous observations and consultations by the appropriate supervisory designees" (Matter of Baylis v Board of Educ. of the City School Dist. of the City of New York, 80 AD2d 610 [2d Dept 1981]). Considerable evidence was placed before the CRC substantiating the unsatisfactory rating. Since the record reflects ample evidence supporting the unsatisfactory rating of Ladson's performance and her subsequent termination, it cannot be said that the denial of her appeal of the unsatisfactory rating was either arbitrary or capricious. Additionally, Ladson's claim of bias by the CRC is rejected as conclusory and without evidentiary support. Further, there is no support for Ladson's claim that she was deprived of due process rights. Furthermore, she has not demonstrated that she was entitled to a copy of the CRC recommendation, since, as set forth in the Board's Appeals Process Handbook, these recommendations are confidential in nature.

The court therefore concludes that the February 1, 2005 determination had a

rational basis, was not arbitrary or capricious, and was in accordance with applicable law (Matter of Pell v Board of Educ., supra), and is therefore entitled to judicial affirmance.

CONCLUSION

Based upon the above, it is

ORDERED and ADJUDGED that the application is denied and the petition is dismissed with costs and disbursements to respondent; and it is further

ORDERED that within 30 days of entry of this order, respondent shall serve a copy upon petitioner with notice of entry.

Dated:

4/11/06



J.S.C.

G:\Supreme Court\Article 78\adson.nycbdofed.wpd

FILED
APR 11 2006
CLERK OF THE COURT
COUNTY OF ALBANY
This judgment had not been entered by the County Clerk and notice of entry cannot be served based hereon. To appear in person at the Judgment Clerk's Desk (Room 141B).