

Greene v City of New York

2013 NY Slip Op 30381(U)

February 19, 2013

Supreme Court, New York County

Docket Number: 103513/2012

Judge: Kathryn E. Freed

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. KATHRYN FREED
JUSTICE OF SUPREME COURT

PRESENT: _____
Justice

PART 5

Index Number : 103513/2012
GREENE, AGNITHA
vs
CITY OF NEW YORK
Sequence Number : 001
ARTICLE 78

CyL # 57

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

FILED

FEB 22 2013

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 2-19-13
FEB 19 2013

HON. KATHRYN FREED
JUSTICE OF SUPREME COURT, J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 5

-----X

AGNITHA GREENE,

Petitioner,

-against-

CITY OF NEW YORK; NEW YORK CITY
DEPARTMENT OF EDUCATION; DENNIS
WALCOTT, CHANCELLOR of NEW YORK CITY
DEPARTMENT OF EDUCATION,
Respondents.

DECISION/ORDER
Index No.: 103513/2012
Seq. No.: 003

PRESENT:
Hon. Kathryn E. Freed
J.S.C.

FILED

FEB 22 2013

NEW YORK
COUNTY CLERK'S OFFICE

For an Order and Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules.

-----X

HON. KATHRYN E. FREED:

Recitation, as required by CPLR §2219[a], of the papers considered in the review of this (these)
motion(s):

PAPERS	NUMBERED
NOTICE OF MOTION AND AFFIDAVITS ANNEXED.....
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED.....
ANSWERING AFFIDAVITS.....3.....
REPLYING AFFIDAVITS.....4.....
EXHIBITS.....
OTHER.....(Notice of Petition), (Memo of Law).....1,2.....

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THIS MOTION IS AS FOLLOWS:

Petitioner moves for an Order pursuant to CPLR Article 78, “declaring as arbitrary, capricious, unreasonable, an abuse of discretion, retaliatory, lacking a rational basis and/or substantial evidence, in bad faith, and/or in violation of lawful procedure, respondent New York City Department of Education’s, (hereinafter, “DOE”), determination to sustain petitioners unsatisfactory annual APPR rating for the 2010-2011 school year; ordering respondents to reverse, annul, and/or

expunge that unsatisfactory annual APPR rating for the 2010-2011 school year; and awarding back pay and any other monetary damages for lost per session work and other adverse financial impacts resulting from said unsatisfactory annual rating.”

The City opposes. No opposition has been received from the Department of Education. After a review of the papers presented, all relevant statutes and caselaw, the Court denies the motion.

Factual and procedural background:

Petitioner has been employed as a tenured Special Education teacher at Hillcrest High School since September 2001. She brings the instant Article 78 proceeding challenging the April 13, 2012 decision of Chancellor Walcott, denying her appeal of an “Unsatisfactory” annual rating for the 2010-2011 school year.

The DOE claims that petitioner’s unsatisfactory rating is primarily based on classroom observations, as well as her failure to utilize the support allotted to her in an attempt to assist her in improving her delivery of instruction as well as her relationships with co-teachers. Assistant Principal Stacie Sugarman observed plaintiff’s conduct in the classroom on several occasions. Each time, she found that plaintiff was deficient in different ways. She neglected to have prepared lesson plans, she exhibited a lack of patience with students, she wrote grammatically incorrect statements on the blackboard and allowed her co-teacher to take over the class, without participating. AP Sugarman also met with a student’s mother who had expressed concern with petitioner’s grading methods. Upon a review of this particular student’s grades, it was discovered that petitioner had unfairly graded the student, and failed to collaborate with her co-teacher in determining the grade.

Several meetings occurred between plaintiff and AP Sugarman, some of which involved Principal Stephen Duch, and at least one involving a representative from the United Federation of

Teachers, (hereinafter, "UFT"), concerning the aforementioned incidents and complaints. The contents of said meetings were memorialized via letters, sent to petitioner and other appropriate parties.

During one meeting, in response to petitioner's concerns about working with co-teachers, Principal Duch instructed AP Sugarman to schedule a meeting with Jessica Stillman, a co-teacher, with the intent of developing collaborative planning strategies. The Principal further instructed AP Sugarman to schedule weekly meetings with petitioner with the intent of planning lessons appropriately. This directive was also memorialized via letter.

On June 13, 2011, AP Sugarman observed petitioner's 8th period Resource Room class, and determined that petitioner failed to develop a method to assess the students' learning capacity for the period, and failed to utilize available resources to insure a high attendance for this class, even after these objectives had been discussed previously. AP Sugarman gave petitioner a "developing" rating at that time. Petitioner was subsequently given an U rating for the 2010-2011 school year.

In addition to her overall rating of Unsatisfactory, her Annual Professional Performance Review and Report, (hereinafter, "APPRR"), indicates that Principal Duch rated her unsatisfactory in various categories. These categories include: voice; speech and use of English; professional attitude; professional growth; effect on character and personality growth of pupils; planning and preparation of work; skill in adapting instruction to individual needs and capacities; effective use of appropriate methods and techniques; and evidence of pupil growth in knowledge, skills, appreciations and attitudes.

Petitioner appealed the U rating and said appeal was then heard by the Chancellor's Chairperson, Joseph F. Belesi, on February 14, 2012. After hearing and considering testimony and

documentary evidence related to this appeal, the Chancellor's Committee recommended that petitioner's appeal be denied. Consequently, on April 13, 2012, the Chancellor officially denied the appeal and sustained the U rating.

Prior to the subject 2010-2011 school year, petitioner alleges that she was consistently rated as performing "more than satisfactory." However, she alleges that in September 2010, newly appointed AP Stacy Sugarman decided that petitioner should begin to co-teach classes, which she did not want to do. Nevertheless, petitioner initially began teaching Earth Science, a subject with which she had no prior experience. She was also forced to co-teach her classes with an inexperienced teacher. AP Sugarman denied petitioner's request to be switched out of this particular class. After discussions with Science Department Head Martin Walsh, petitioner was switched to two co-teaching English classes. Petitioner also alleges that one of her co-teachers, Jessica Stillman, has had a history of problems with co-teaching with other teachers, and that she was uncooperative in sharing lesson plans with petitioner and undermined petitioner's authority in the presence of students. Petitioner alleges that her numerous complaints regarding Ms. Stillman were routinely ignored by school administration.

After petitioner was switched out of the Earth Science class, she alleges that she was constantly harassed and intimidated by AP Sugarman and Principal Duch. Additionally, school administration began a pattern of scrutinizing her teaching without prior notice and during the absence of her co-teacher. She contends that both Sugarman and Duch exhibited animus and hostility towards her, constantly undermining her efforts and suggestions. She alleges that Principal Duch made comments on several occasions wherein he threatened to end her career. On June 22, 2011, petitioner received the Unsatisfactory APPR evaluation for the 2010-2011 school year.

* 6]

Positions of the parties:

Petitioner argues that respondents' April 13, 2012 determination to sustain her Unsatisfactory annual rating for the 2010-2011 year was arbitrary, capricious, and not supported by substantial evidence. She also argues that this court should follow a judicial precedent of overturning such unsatisfactory ratings emanating from the DOE, when said ratings, such as this one, are proven to be capricious, arbitrary and in bad faith.

The City asserts that the DOE's decision to sustain petitioner's unsatisfactory rating was neither arbitrary nor capricious. It argues that a court must uphold an agency's exercise of discretion unless it lacks a rational basis. Moreover, the City argues that because it has never been petitioner's employer, it is not a proper party to the instant matter and as such, all claims against it should be dismissed.

Conclusions of law:

It is well settled that the Board of Education is not a department of the City of New York (*see Ragsdale v. Board of Education of City of New York*, 282 N.Y. 323 [1940]; *Matter of Divisich v. Marshall*, 281 N.Y. 170 [1939]). The City and the Board of Education are considered to be separate and legally distinct entities (*see* New York State Education Law§ 2552; *Corzino v. City of New York*, 56 A.D.3d 370 [1st Dept. 2008]; *Perez v. City of New York*, 41 A.D.3d 378 [1st Dept. 2007], *lv. denied* 10 N.Y.3d 709 [2008]). Therefore, the Court finds that the City is not a proper party and as such, should be released from the instant suit (*see Perez v. City of New York, supra*; *Stepper v. Department of Educ. of New York*, 98 A.D.3d 915 [1st Dept. 2012]).

The Court will next address plaintiff's motion with regard to the DOE. The role of a court in an Article 78 proceeding is to consider whether "the determination was made in violation of

lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion.... (*see* CPLR§ 7803 [3]).

It is well settled that a court must uphold an agency's exercise of discretion unless it lacks a rational basis (Pell v. Bd. of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 N.Y.2d 222, 231 [1974]). In reviewing an administrative agency's determination to ascertain whether it is arbitrary and capricious, the test is whether the determination "is without sound basis in reason and is generally taken without regard to the facts" (Pell v. Bd. of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 N.Y.2d at 231; *see also* Mankarios v. New York City Taxi and Limousine Com'n., 49 A.D.3d 316, 317 [1st Dept. 2008]; Soho Alliance v. New York State Liquor Auth., 32 A.D.3d 363, 363 [1st Dept. 2006]; Kenton Assoc. v. Division of Hous. & Community Renewal, 225 A.D.2d 349 [1st Dept. 1996]; Peckham v. Calogero, 12 N.Y.3d 424, 431 [2009]).

"The judicial function is exhausted when there is to be found a rational basis for the conclusions approved by the administrative body" (Sullivan County Harness Racing Assn. v. Glasser, 30 N.Y.2d 269, 277-278 [1972]). However, even "[i]f the court finds that the determination is supported by a rational basis, it must sustain the determination even if the court concludes that it would have reached a different result than the one reached by the agency" (Matter of Peckham, 12 N.Y.3d at 431; *see also* Imperial Diner, Inc. v. State Human Rights Appeal Bd., 52 N.Y.2d 72, 79 [1980]; Sullivan County Harness Racing Assn., 30 N.Y.2d at 277-278; Olick v. D'Allesandro, 31 Misc.3d 1218(A) (Sup. Ct., N.Y. County 2011)).

In the case at bar, the Court has reviewed the various exhibits annexed to the City's "Verified Answer." Said exhibits include letters from both Ms. Sugarman and Mr. Duch, memorializing the

contents of the meetings held between petitioner and both Ms. Sugarman and Mr. Duch, individually and collectively; the “Annual Professional Performance Review And Report On Probationary Service Of Pedagogical Employee;” the transcribed testimony of the DOE Chancellor’s Hearing which took place on February 14, 2012, wherein petitioner gave a statement; the April 13, 2012 letter to petitioner from Shael Polakow-Suransky, Senior Deputy Chancellor, apprising her that her appeal has been denied; and the “Review of an appeal from a rating of ‘Unsatisfactory’ for the period ending June 30, 2011.

Following its extensive review, the Court finds that the DOE’s decision not to grant petitioner’s appeal was not arbitrary and capricious and has a rational basis. Indeed, the Court also finds that petitioner’s accusations and allegations are wholly conclusory and unsupported by the evidence presented. In making its decision, the Court is mindful that an administrative agency’s determination “involves factual evaluations in an area of the agency’s expertise and is supported by the record, such [determination] must be accorded great weight and judicial deference” (Flacke v. Onondaga Landfill Systems, Inc., 69 N.Y.2d 355, 363 [1987]; *see also* Peckham v. Colagero, 12 N.Y.3d at 431; Rosario v. New York State Div. of Human Rights, 21 Misc.2d 1108(A), (Sup. Ct. N.Y. County 2008)).

Therefore, in accordance with the foregoing, it is hereby

ORDERED that the complaint and any cross claims against the City are dismissed as against it; and the Clerk is directed to enter judgment in favor of said defendant; and it is further

ORDERED that petitioner’s motion as against the remaining defendants’ New York City Department of Education and Dennis Walcott, Chancellor of New York City Department of Education; is denied and it is further

ORDERED that the case is hereby dismissed; and it is further

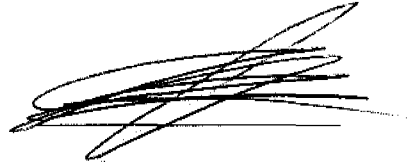
ORDERED that the defendants herein are to serve the plaintiff with a copy of this order with notice of entry within twenty (20) days, and it is further

ORDERED that this constitutes the decision and order of the Court.

DATED: February 19, 2013

ENTER:

FEB 19 2013



Hon. Kathryn E. Freed
I.S.C.
HON. KATHRYN FREED
JUSTICE OF SUPREME COURT

FILED

FEB 22 2013

NEW YORK
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