Matter of Principe v New York State Educ. Dept.
2013 NY Slip Op 32303(U)
September 30, 2013
Sup Ct, Albany County
Docket Number: 3512-13
Judge: Joseph C. Teresi

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY
In the Matter of the Application of

PETER PRINCIPE,

Petitioner,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

-against-

DECISION and ORDER
INDEX NO. 3512-13
RJI NO. 01-13-ST4793

NEW YORK STATE EDUCATION DEPARTMENT
and JOHN B. KING, JR., as Commissioner of Education,

Respondents.

Supreme Court Albany County All Purpose Term, September 20, 2013
Assigned to Justice Joseph C. Teresi

APPEARANCES:
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TERESI, J.:

Petitioner commenced this proceeding to challenge Respondents' March 8, 2013 letter determination (hereinafter "Respondents' Determination"), which denied Petitioner's request to extend his previously issued Provisional Certificate in Business and Distributive Education

(hereinafter "Provisional Certificate"). Prior to answering Respondents move to dismiss, alleging that Petitioner failed to state a cause of action and challenging the petition's ripeness. Petitioner opposes the motion. Because Respondents failed to demonstrate their entitlement to dismissal on either theory they proffered, their motion is denied.

Prior to addressing Petitioner's current claim and Respondents' motion, this proceedings' context and background require an explanation.

Effective February 1, 2004, Petitioner was issued the Provisional Certificate at issue. It authorized him to teach in New York's public schools for five years, until January 31, 2009. As relied upon by Respondents, upon expiration of the Provisional Certificate it could be extended for two years, and then again for one year. (8 NYCRR §80-1.6)

With the Provisional Certificate, Petitioner was employed by a public middle school located in Brooklyn, New York, and by April 2007 was its dean of discipline. On April 20 and 23, 2007 Petitioner was involved in two corporal punishment incidents. A Hearing Officer conducted an Education Law §3020-a hearing relative to such incidents, and on October 27, 2009 found that Petitioner had committed the alleged acts and imposed the punishment of termination.

Petitioner challenged such penalty in a CPLR Article 75 proceeding, in which Supreme Court - New York County (Schlesinger, J.) held that the penalty was excessive. On appeal, the Appellate Division affirmed. It too found "the penalty excessive and shocking to our sense of fairness." (Principe v New York City Dept. of Educ., 94 AD3d 431, 433 [1st Dept 2012]). The Court of Appeals then held that "[t]he Appellate Division correctly determined that the penalty of termination imposed on petitioner was excessive." (Principe v New York City Dept. of Educ., 20 NY3d 963[2012]).

After all appellate avenues were exhausted, the matter was remanded to a different Hearing Officer (hereinafter "Berg"). By Decision and Opinion, dated January 28, 2013, Berg considered the above history and relevant precedent. He held that Petitioner's "penalty shall be an eighteen month suspension without pay beginning from the date he was removed from the Department's[1] payroll in November 2009. [Petitioner] is to be reinstated to service immediately and receive back pay for the period of approximately twenty months after the end of the suspension without pay."

Petitioner was not reinstated, however, because his Provisional Certificate had expired.

On July 9, 2013 Supreme Court - New York County (Schlesinger, J.) confirmed Berg's award.[2] She also specifically considered and rejected Respondents' contention that Petitioner's Provisional Certificate could not be extended, and stated: "I urge [Respondents], during these summer months, to expeditiously process [Petitioner's] application for certification so that in the Fall, September of 2013, any impediments to the resumption of his career will be gone."

Within this context and background, Respondents' failed to demonstrate their entitlement to dismissal pursuant to CPLR §3211(a)(7).

On Respondents' motion to dismiss (CPLR §3211[a][7]) for failure to state a cause of action this Court "must afford the [petition] a liberal construction, accept the facts as alleged in the pleading as true, confer on the [Petitioner] the benefit of every possible inference and determine whether the facts as alleged fit within any cognizable legal theory." (Torok v Moore's

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[1] "Department" refers to the New York City Department of Education.

[2] Such decision was rendered after this proceeding was commenced but before Respondents made their motion.

Flatwork & Foundations, LLC, 106 AD3d 1421 [3d Dept 2013], quoting Scheffield v Vestal Parkway Plaza, LLC, 102 AD3d 992 [3d Dept 2013]; Simkin v Blank, 19 NY3d 46 [2012]). "[T]he dispositive inquiry is whether [Petitioner has] a cause of action and not whether one has been stated." (Alaimo v Town of Ft. Ann, 63 AD3d 1481, 1482 [3d Dept 2009], quoting IMS Engineers- Architects, P.C. v State, 51 AD3d 1355 [3d Dept 2008]).

Here, the Petitioner has a cause of action. As set forth above, the Provisional Certificate was initially valid for five years and expired, by its own terms, on January 31, 2009. At that time, however, Petitioner was embroiled in the above explained disciplinary proceeding. According to Petitioner, by a June 23, 2009 letter, Respondents granted an extension to his Provisional Certificate but imposed a disciplinary hold on its issuance. Petitioner submitted a copy of such letter, which stated that "[o]nce the above [disciplinary] matter has been resolved, your certificate will be printed and mailed to you." Petitioner also alleges that Respondents informed him, on January 31, 2010, that "it would reissue his Provisional Certificate if he successfully challenged his dismissal."

Although Petitioner has now successfully challenged his dismissal, Respondents' Determination refused to extend Petitioner's Provisional Certificate. Respondents claim that the applicable regulation, 8 NYCRR §80-1.6, provides three consecutive years of extensions only. Thus, according to their logic, even if Petitioner were granted the three total years of extensions from January 31, 2009, his final extension would have expired on January 31, 2012. Because the final extension time period has already past, continues Respondents' argument, Petitioner is not entitled to any further extension. Affording Petitioner the benefit of every possible inference, he demonstrated that Respondents' Determination is premised on an overly strict reading of the

regulatory provisions, it ignores the practical effect of the pendency of the disciplinary proceeding, and would effectively eviscerate his right to challenge the disciplinary proceeding and obtain the relief granted. As such, Petitioner set forth a viable CPLR Article 78 challenge to the Respondents' Determination by claiming it is unlawful, arbitrary and capricious. (CPLR §7803[3]).

To the extent Respondents construed the petition as setting forth only a mandamus to compel claim, such argument is not based upon an analysis of the petition. Rather, it simply disregarded the petition's allegations and focused solely on a single portion of Petitioner's request for relief. Such contention failed to demonstrate Respondents' entitlement to dismissal.

Accordingly, Respondents' CPLR §3211(a)(7) motion to dismiss is denied.

Respondents' motion to dismiss on ripeness principles is similarly unavailing.

"An action will be deemed final[, and therefore ripe for review,] if a pragmatic evaluation reveals that the decision-maker has arrived at a definitive position on the issue that inflicts an actual, concrete injury." (Adirondack Council, Inc. v Adirondack Park Agency, 92 AD3d 188, 190 [3d Dept 2012], quoting Church of St. Paul and St. Andrew v Barwick, 67 NY2d 510 [1986] [internal quotation marks omitted]).

Here, Respondents failed to demonstrate that they have not come to a final definitive position which has caused Petitioner a concrete injury. Respondents argue that this matter is not ripe by relying on the "express language" of the Respondents' Determination. The specific quote they rely upon is: "In order for this office to further evaluate your application for a third-year and final time extension (which if issued would expire 01/31/12) please submit to this office for evaluation, the following documentation..." In context, however, the plain language relied on

demonstrates that Respondents' Determination is final. As the quoted language was issued on March 8, 2013 and states that the extension Petitioner seeks, if granted, would have already expired more than a year earlier (01/31/12), such decision inflicts an actual concrete injury. The Respondents' Determination does not seek any further documentation relative to its "expire 01/31/12" decision, which inflicts the actual concrete injury that Petitioner is challenging herein. Moreover, Respondents' CPLR §3211(a)(7) arguments above confirm the finality of their extension expiration position. As such, Respondents failed to demonstrate that this proceeding is not ripe for review.

Accordingly, Respondents' motion is denied. In accord with CPLR §7804(f), Respondents' answer "shall be served and filed within five days after service of the order with notice of entry." Petitioner shall serve and file its reply, if any, within two days of its receipt of Respondents' answer. No extensions to these time frames will be granted.

This Decision and Order is being returned to the attorneys for the Petitioner and a copy to the Respondents' attorneys. All original papers submitted are being held, pending submission and execution of the order required above. Upon execution, a copy of this Decision and Order and all original papers will be delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: September 30, 2013
Albany, New York

JOSEPH C. TERESI, J.S.C.

PAPERS CONSIDERED:

1. Notice of Petition, dated June 17, 2013; Verified Petition, dated June 17, 2013, with attached Exhibits A-C.
2. Notice of Motion, dated September 16, 2013.
3. Affirmation of Stuart Lichten, dated September 17, 2013, with attached Exhibit A.