Matter of O'Neill v New York City Health & Hosps. Corp.

2014 NY Slip Op 30046(U)
January 3, 2014
Supreme Court, New York County
Docket Number: 102980/12
Judge: Peter H. Moulton

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This opinion is uncorrected and not selected for official publication.

[* 1] FILED ON 1/13/2014

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PETER H. MOULTON
Justice

PART 41B

Index Number : 102980/2012
O'NEILL, MARIA
vs.
N.Y.C.H.H.C.
SEQUENCE NUMBER : 002
REARGUMENT/RECONSIDERATION

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 denied per attached

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

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JAN 13 2014
NEW YORK COUNTY CLERK'S OFFICE

Dated: 1/3/14

______, J.S.C.
HON. PETER H. MOULTON

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 40B

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In the Matter of the Application of

MARIA O'NEILL,

Petitioner,

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

Index No. 102980/12

-against-

THE NEW YORK CITY HEALTH AND HOSPITALS CORPORATION; PRESIDENT OF THE NEW YORK CITY HEALTH AND HOSPITALS CORPORATION; and THE NEW YORK CITY HEALTH AND HOSPITALS CORPORATION PERSONNEL REVIEW BOARD; CHAIR OF THE NEW YORK CITY HEALTH AND HOSPITALS CORPORATION PERSONNEL REVIEW BOARD,

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JAN 13 2014
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Respondents.

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Peter H. Moulton, J.S.C.:

Respondents move to reargue the court's Decision, Order and Judgment, dated April 19, 2013. Respondents also seek leave to appeal. Petitioner opposes reargument. Leave to reargue is denied for the reasons described herein and leave to appeal is denied because the Decision, Order and Judgment was final and therefore, no leave is required.[1]

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[1]The "gray sheet" is marked "Case Disposed." In any event, the decision ends with a Judgment as indicated by the "ADJUDGED" language.

[* 3]

In this proceeding, petitioner sought a finding (among other things), that she was entitled to a hearing challenging the conclusion by respondent New York City Health and Hospitals Corporation Personnel Review Board (PRB) that she was medically unfit to return to work as a Patient Care Advocate. Pursuant to HHC Personnel Rules and Regulations Rule 7.3.4 ("Rule 7.3.4") petitioner had been granted a one year leave of absence for a work related injury in August 2009, but she was terminated on September 9, 2010 when she did not return to work.[2] Petitioner applied for reinstatement August 12, 2011 pursuant to Rule 7.3.4.

Respondents acknowledge that Rule 7.3.4 must be consistent with CSL § 71, but maintain that the court erred in finding that CSL § 71 affords petitioner the right to hearing to contest

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[2]HHC Rule 7.3.4 (a) entitled "Reinstatement following Separation for Work-Related Disability or Disease," states that

> i. A permanent employee who has been separated from service because of a job connected disability or disease as defined in the Worker's Compensation Law shall be entitled to a leave of absence for at least one year unless permanently incapacitated from performing the duties of the position.
>
> ii. If, upon appeal to the Personnel Review Board within one year following termination of the disability, the PRB medical officer certifies that such person is physically, medically and mentally fit to perform the essential duties of his/her former title with or without a reasonable accommodation, he/she shall be reinstated to his/her former title if there is a vacancy or to a similar or lower title in the same occupational field or to a vacant position for which he/she is eligible for transfer.

respondents' denial of reinstatement. Respondents argue that the court overlooked that the "the termination of an employee and a subsequent application for reinstatement are two separate and distinct procedures." They point out that CSL § 71 does not speak to the right to a hearing. However, as previously noted by the court, that argument is not persuasive given that *Matter of House v New York State Office of Mental Health* (262 AD2d 929 [3d Dept 1999] [*House*]) held that such a right exists even though the statute is silent on that point. Moreover, the right to a post termination hearing exists also exists under CSL § 73, a sister statute, as held in *Matter of Gaines v New York State Division of Youth* (213 Ad2d 894 [3d Dept 1995]). Like CSL § 71, CSL § 73 does not refer to the right to a hearing.

Respondents motion is primarily based on factually distinguishing *House* without any substantive argument. Respondents point out that *House* involved State employees and not HHC employees, but do not explain why such a factual distinction is relevant. Respondents also distinguish *House* and *Gaines* on the basis that the petitioners in those cases submitted medical evidence to demonstrate fitness to return to work prior to the termination date, while here petitioner did not submit evidence until nearly one year after the termination date.[3] Again,

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[3]Petitioner commenced her leave of absence in August 2009. By letter dated August 9, 2010, HHC informed petitioner that she would be terminated from her position as of September 9, 2010,

respondents do not state why such a factual distinction is relevant. Respondents appear to fault petitioner for not contesting the agency's decision to terminate her prior to termination, but overlook the fact that petitioner might not have been able to return to work at that time.

The court denies leave to reargue because it did not err in finding that a hearing was required. CSL § 71 does not distinguish between procedures regarding the termination of an employee and a subsequent application for reinstatement. CSL § 71 is entitled "Reinstatements after separation for disability" and states in relevant part that:

> Where an employee has been separated from the service by reason of a disability resulting from occupational injury or disease as defined in the [workers'] compensation law [], he or she shall be entitled to a leave absence for at least one year, unless his or her disability is of such a nature as to permanently incapacitate him or her for the performance of the duties of his or her position. . . Such employee may, within one year after the termination of such disability, make application to the civil service department ... for a medical examination to be conducted by a medical officer selected for that purpose by such department or commission. If, upon such medical examination, such medical officer shall certify that such person is physically and mentally fit to perform the duties of his or her former position, he or she shall be reinstated to his or her former position

Unlike Rule 7.3.4, which contains a subsection "(i)" and a

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pursuant to Rule 7.3.4, "unless you submit medical documentation prior to that date stating that you are fit to return to full duty."

subsection "(ii)" CSL § 71 contains no subsections. Rule 7.3.4 separates, by subsections, the entitlement to a one year leave of absence and the right to reinstatement within one year of termination of the disability. Yet CSL § 71 refers to all procedures under one umbrella and under one heading "Reinstatements after separation for disability." Respondents have not advanced any argument or rationale as to why a hearing on medical issues would be required in the former instance, but not the latter. The statute provides the employee with the benefit of not only a one year leave of absence, but the right to return to work if fit (and based on availability) if an application is made within one year after the termination of the disability. While is it true that the latter benefit is tied to the cessation of the disability, which might not occur until many years later or not at all, this is the right that the statute provides. If a hearing is required in the first instance, there is no reason to deny it in the latter. Accordingly, it is

ORDERED that the respondents' motion is denied.

Dated: January 3, 2014

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J.S.C.

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