

Cutler v Town of Mamakating
2014 NY Slip Op 33949(U)
October 31, 2014
Supreme Court, Sullivan County
Docket Number: 2129-2014
Judge: Michael F. McGuire
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SULLIVAN

OLIVER CUTLER,

PETITIONER,

- AGAINST -

DECISION and JUDGMENT

TOWN OF MAMAKATING,

RESPONDENT,

AS AND FOR AN ORDER PURSUANT TO
ARTICLE 78 OF THE CPLR.

Motion Return Date: October 15, 2014

RJI No.: 52-35998-2014

Index No.: 2129-2014

MCGUIRE, J., Acting J.S.C.

Petitioner Oliver Cutler (Cutler) brings this hybrid CPLR article 78 proceeding/declaratory judgment action seeking a determination of this Court that respondent acted in violation of the law and in an arbitrary and capricious manner by terminating petitioner's employment as Parks Maintenance Supervisor for respondent Town of Mamakating, and directing respondent, among other things, to reinstate petitioner to his former position and compensate him for lost wages and benefits, together with the costs and disbursements of this action.

Respondent Town of Mamakating (Town) has filed an answer, alleging, among other things that the petition fails to state a cause of action.

Petitioner was employed for the past 17 and one-half years by respondent Town as Parks Maintenance Supervisor, a non-competitive civil service position, until August 1, 2014 when respondent stopped paying petitioner and the Town Supervisor advised petitioner and the County of Sullivan that petitioner's position had been eliminated. Petitioner alleges that on or about August 15, 2014, the Town Supervisor advised the Sullivan County Personnel Office that petitioner had been laid off due to lack of work funds. Petitioner alleges further that in his letter to the Sullivan County Personnel Office respondent Town's Deputy Supervisor Robert Fiore (Fiore) falsely claimed

that the “Town Board moved to abolish the position of Park Maintenance Supervisor on February 4, 2014” when, in fact, the minutes of the February 4, 2014 town board meeting indicate that no such action was taken by the Town Board on that date. The petitioner contends further that when asked by the Sullivan County Personnel Office to provide documentation to show that the position was abolished, Fiore sent a hand-written note without any such documentation.

As a basis of his application, petitioner claims that the abolition by respondent of his position is illegal and must be rescinded with an appropriate award of back pay and benefits with interest and fees and disbursements. He further argues that respondent did not terminate petitioner’s job in good faith, did not abolish the job title through any formal resolution or motion and did not terminate petitioner in accordance with New York State Civil Service Law and, therefore, respondent’s actions are illegal. The petitioner further requests that this Court declare the termination of petitioner illegal and that respondent’s actions are arbitrary and capricious and contrary to law.

In this proceeding, the issue of whether the Town’s decision to eliminate petitioner’s position was arbitrary and capricious turns on whether the determination under review has a rational basis (*see Pell v Board of Ed. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County*, 34 NY2d 222 [1974]). The arbitrary and capricious test chiefly relates to whether a particular action should have been taken or is justified, and whether the action taken is without foundation in fact (*id.*).

Petitioner’s claims are denied as the Town’s decision to terminate petitioner was neither arbitrary or capricious or violative of the law. It is well settled that a public employer may abolish civil service positions for the purpose of economy or efficiency (*see Civil Service Law § 80 [1]; Matter of Aldazabal v Carey*, 44 NY2d 787, 788 [1978]), as long as the position is not abolished as a subterfuge to avoid statutory protection afforded civil servants before they are discharged (*see Matter of Della Vecchia v Town of N. Hempstead*, 207 AD2d 484, 484-485 [1994]). “[O]ne who challenges the validity of such an act has the burden of proving that the employer did not act in good faith in abolishing the position” (*Matter of Rosenthal v Gilroy*, 298 AD2d 748, 749 [1994]). A “petitioner must eliminate bona fide reasons for the elimination of his [or her] position, show that no savings were accomplished or that someone was hired to replace him [or her]” (*Matter of Mucci v City of Binghamton*, 245 AD2d 678, 679 [1987], *lv dismissed* 91 NY2d 921 [1998], *lv denied* 92

NY2d 802 [1998]).

Here, respondent demonstrated that it was seeking ways to save money and increase the efficiency of the Town's Park Maintenance Department. In his affidavit, Town Supervisor William E. Herrmann alleges that when he took office on January 1, 2014, petitioner was employed by respondent as Parks Maintenance Supervisor and had one part-time laborer in his department that he supervised. Herrmann avers further that during his review of the town budget and personnel, it became readily apparent that the Parks Maintenance Department was understaffed but that there were insufficient funds to create additional positions. He stated further that his experience as a private home inspector and in management in private industry allowed him to take a more active role in the supervision of the Parks Maintenance Department, and that he directed the Town's deputy supervisor to investigate options available to the Town in expanding its workforce in the aforesaid department without significantly increasing costs.

Herrmann alleges that he determined that the best option for the Town was to abolish the supervisor's position in the Parks Maintenance Department and transfer that individual's supervisory duties to the Town Supervisor at no additional cost to the Town, putting the Town in a financial position to create two new full-time laborers' positions and an additional part-time laborer's position. This doubled the size of the Park Maintenance Department for less than half the cost, thus increasing the Department's efficiency while saving money, according to Herrmann.

Herrmann alleges that on February 4, 2014, this information was submitted to the Town Board in executive session and, following a discussion, the Town Board unanimously approved a motion to abolish the Parks Maintenance Supervisor position and to create a new laborer's position. On May 21, 2014, the Town advertised for the new full-time and part-time laborer's positions and petitioner was advised that he had a right to apply but he elected not to do so. On July 31, 2014, the petitioner was notified that his position was abolished that he would receive two weeks of administrative leave pay together with his accrued vacation and sick time.

While petitioner challenges the abolition of his position for the purpose of economy or efficiency by suggesting that it is a subterfuge to avoid the statutory protection afforded to civil servants by the New York State Civil Service Law, the Court's review of the record reveals otherwise. Based on the Herrmann affidavit, the reorganization of the Parks Maintenance

Department permitted respondent to hire two full-time laborers and an additional part-time laborer by transferring petitioner's duties to the Town Supervisor. In these circumstances, the Court finds that respondent sustained its burden of showing that petitioner's petition was abolished for economic or efficiency reasons, as is supported by the affidavits of Herrmann and Brenda Giraldi, Town councilwoman. Moreover, the undisputed record before this Court indicates that petitioner was advised by the Town that he could apply for the newly created positions but elected not to do so. Further it is uncontroverted that the duties petitioner performed are subsequently being carried out by Herrmann, an existing Town employee, and, "the assumption of the duties of petitioner's abolished position by another, in itself, is not proof of bad faith" (*Shields v Dinga*, 222 AD2d 816, 818 [1995]). The changes of which petitioner complains are "cost saving and born of economic necessity, and not from improper motives" (*id.*).

Since petitioner's allegations of bad faith and violations of Civil service Law are plainly insufficient, petitioner has failed to meet his burden of overcoming respondent's bona fide reasons for eliminating his position. Nor has petitioner alleged facts sufficient to show his entitlement to a hearing before his position was eliminated. Succinctly stated, petitioner has failed to demonstrate that the protections afforded by the Civil Service Law were triggered (*see e.g. Matter of Mucci v City of Binghamton*, 245 AD2d 678, 679 [1997]).

Finally, as to petitioner's argument that respondent violated the Open Meetings Law (Public Officers Law art 7) when the Town Board conducted an executive session to discuss the Town's fiscal and personnel issues, as respondent properly argues, executive session are permitted to discuss personnel action as a result of fiscal constraints (*see* Public Officers Law § 105 [1] [f]). As is indicated by Exhibit "A" of respondent's verified answer, at the February 4, 2014 Town Board meeting, a motion was made to into executive session for pending litigation and personnel issues, after which the Town Board came out of executive session and a motion was unanimously carried to create a full-time laborer position, and the Town Board unanimously voted to abolish the Park Maintenance Supervisor position during its executive session (*see also* Giraldi Aff.).

In light of the foregoing, the Court concludes that respondent's decision to abolish petitioner's position must be sustained as it has a rational basis, nor is it violative of the law, and it cannot be said that the Town acted arbitrarily or capriciously.

Accordingly, the Court denies petitioner's request for relief and dismisses the proceeding in its entirety. The Court grants respondent costs and disbursements of this proceeding.

This shall constitute the Decision and Judgment of this Court. All papers, including the original copy of this decision and judgment, are being forwarded to the Sullivan County Clerk's Office for filing. Counsel are not relieved from the provisions of CPLR 2220 regarding service with notice of entry.

Dated: Monticello, New York
October 31, 2014

ENTER



HON. MICHAEL F. MCGUIRE, AJSC

Papers considered:

Verified petition, dated September 11, 2014, with exhibits; answer, undated but received by the Court October 8, 2014, together with exhibits annexed.