

Khan v New York City Health and Hosps. Corp.

2015 NY Slip Op 30690(U)

April 27, 2015

Supreme Court, New York County

Docket Number: 158058/14

Judge: Donna M. Mills

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

SHAHNAWAZ KHAN,

**INDEX NO.
158058/14**

Plaintiff,

- against -

THE NEW YORK CITY HEALTH AND HOSPITALS CORPORATION, and individually and in their official capacity: YVETTE VILLANUEVA, Senior Associate Executive Director of Northern Manhattan Health Network Human Resources and DENISE C. SOARES, Senior Vice President of Generations+ of the Northern Manhattan Health Network,

DECISION/ORDER

Defendants.

DONNA M. MILLS, J:

In this employment discrimination case, defendants the New York City Health and Hospitals Corporation (“HHC”), and two HHC employees, Yvette Villanueva (“Villanueva”) and Denise C. Soares (“Soares”) (collectively “Defendants”), move for an order, pursuant to CPLR 3211 (a) (5), dismissing the verified complaint of plaintiff Shahnawaz Khan in its entirety.

BACKGROUND

Plaintiff, a self described Muslim American man of Pakistani descent has been employed by defendant, HHC, for over thirty years, first in a civil service title as a Pharmacist and then as the Director of Pharmacy for Harlem Hospital. As Director of Pharmacy Services, plaintiff was responsible for managing the entire pharmacy staff of approximately fifty employees, including Pharmacists, Pharmacy Technicians and Clerical Associates. In that capacity, plaintiff monitored the details of the employees’ work, scheduled their shifts, evaluated their performance and wrote their performance reviews, and worked with Personnel and Labor Relations in selecting personnel for vacancies and

promotions.

On or about March 4, 2013, having received several complaints regarding plaintiff's administration of the Pharmacy Department, HHC initiated an investigation into said complaints. The complaints included allegations that plaintiff gave staff of Pakistani national origin preferential treatment in scheduling their shifts, in approving their requests for leave and in consideration for promotion and advancement. Pursuant to the investigation, HHC found that plaintiff violated both HHC's Nepotism Policy and the employment application certification agreement he had signed and that his poor management skills had divided staff, lessened staff morale, and had many questioning his leadership. In May 2013, plaintiff was stripped of his title as Director of Pharmacy and exercised his right to revert back to his civil service title of Pharmacist.

Plaintiff alleges in the instant action that Defendants' determination to terminate his appointment as Director of Pharmacy at Harlem Hospital Center was a result of unlawful discrimination on the basis of race, national origin and religion, alleging violations of the New York State Human Rights Law, New York Executive Law § 296, et seq. ("SHRL"), the Administrative Code of the City of New York § 8-107 et seq. ("CHRL"), New York Labor Law § 741, and the Civil Rights Act of 1866, 42 U.S.C. § 1981.

Prior to bringing the instant special proceeding, plaintiff had previously commenced an Article 78 special proceeding on September 17, 2013. The Verified Petition, as later amended on February 3, 2014, like the instant Complaint, challenged Defendants' determination to terminate plaintiff's appointment as Director of Pharmacy of Harlem Hospital. Plaintiff's prior special proceeding alleged that the decision to terminate his Directorship was a result of unlawful discrimination based on his race and religion, in violation of the SHRL and CHRL. In the Article 78 petition, plaintiff sought an order: (1) directing defendants to reverse their determination to terminate plaintiff's appointment as

Director of Pharmacy at Harlem Hospital Center; (2) reinstating plaintiff to the position of Director of Pharmacy at Harlem Hospital Center; (3) ordering compensatory and punitive damages in connection with the wrongful termination of plaintiff's appointment as director; (4) awarding attorney's fees and costs.

On July 17, 2014, the Honorable Cynthia S. Kern issued an Order and Judgment denying the Petition in its entirety. Specifically, Justice Kern determined that Defendants' removal of plaintiff from his position as Director of Pharmacy Services was made on a rational basis based on the fact that the investigation uncovered evidence that plaintiff was untruthful with regard to charges of nepotism and that he favored employees of Pakistani national origin.

Defendants now move to dismiss the complaint in its entirety. Defendants argue that plaintiff's claims under Labor Law § 741 were raised in the prior Article 78 proceeding against the same Defendants, and it was litigated to judgment on the merits, and plaintiff is now accordingly barred under the doctrine of collateral estoppel. Defendants also maintain that plaintiff's discrimination claims alleging that his termination was unlawful and discriminatory due to his race, religion or national origin arise out of the same facts that gave rise to his Article 78 challenge to his termination, and accordingly are barred under the doctrine of res judicata.

APPLICABLE LAW AND DISCUSSION

"The doctrine of collateral estoppel . . . precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity, whether or not the tribunals or causes of action are the same" (*Ryan v New York Tel. Co.*, 62 NY2d 494, 500 [1984]). Collateral estoppel effect will be given only to matters actually litigated and determined in a prior action or proceeding (see *Kaufman v Eli Lilly & Co.*, 65 NY2d 449, 456 [1985]). It must be

shown that the identical issue was decided in the prior action or proceeding, is decisive in the present action, and that the party to be precluded from relitigating the issue had a full and fair opportunity to contest it (*id* at 455).

“Res judicata will bar litigation of a claim that was either raised, or could have been raised, in a prior action provided that the party to be barred had a full and fair opportunity to litigate any cause of action arising out of the same transaction and the prior disposition was a final judgment on the merits” (*Kinsman v Turetsky*, 21 AD3d 1246, 1246 [2005], *lv* denied 6 NY3d 702 [2005] [citations omitted]; see *Landau, P.C. v LaRossa, Mitchell & Ross*, 11 NY3d 8, 13 [2008]; *Matter of LaRocco v Goord*, 43 AD3d 500, 500 [2007]).

In the instant action, plaintiff’s claims that Defendants initiated a disciplinary investigation in retaliation for his having attempted to discipline his insubordinate employees; that its investigative findings were unsupported by the record; that the investigative findings did not provide a rational basis for the penalty of termination; and that he was denied the appropriate process relative to his termination, were all raised in the Article 78 proceeding where Justice Kern found that HHC had a rational basis for separating plaintiff from his position as Director of Pharmacy Services based on his conduct as Director. As such, those claims are accordingly barred under the doctrine of collateral estoppel. In addition, plaintiff’s discrimination claims alleging that his termination was unlawful and discriminatory due to his race, religion or national origin arise out of the same facts that gave rise to his Article 78 challenge to his termination, and could have been asserted in that action. Accordingly plaintiff’s discrimination claims are barred under the doctrine of res judicata.

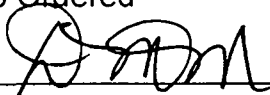
Accordingly, it is

ORDERED that the motion of defendants to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against the defendants, with costs and

disbursements to defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of defendants.

Dated: 4/27/15

So Ordered



Donna M. Mills, J.S.C.

DONNA M. MILLS, J.S.C.