Goldman v City of New York
2018 NY Slip Op 32980(U)
November 20, 2018
Supreme Court, New York County
Docket Number: 150633/2018
Judge: Arthur F. Engoron
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARTHUR F. ENGORON** **PART** **IAS MOTION 37EFM**

Justice

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TRACIE GOLDMAN,

Petitioner,

- v -

CITY OF NEW YORK, NYC DEPT OF EDUCATION, NYC BOARD OF EDUCATION, PETER IANNIELLO,

Respondents.

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INDEX NO. 150633/2018

MOTION DATE 06/12/2018

MOTION SEQ. NO. 001

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion for CPLR ARTICLE 78 RELIEF.

Upon the foregoing documents, the Verified Petition is denied and dismissed.

Background

In this Article 78 proceeding, this Court must determine whether the determination of Respondents, City of New York, NYC Dept of Education ("DOE"), NYC Board of Education ("BOE"), and Peter Ianniello ("Ianniello"; collectively with City of New York, DOE and BOE, "Respondents"), to reject the nomination and application of Petitioner Tracie Goldman ("Petitioner") to work as a substitute teacher was rationally based (i.e., not arbitrary and capricious or an abuse of discretion).

A brief statement of the pertinent facts is necessary, and follows. DOE employed Petitioner as a probationary full-time teacher from the time of her appointment on August 28, 2008, until Respondents terminated her probationary service on or about February 26, 2010. During said time, Petitioner was assigned to work at P.S. 134, The Henrietta Szold School, located in Manhattan (the "School"). Petitioner was terminated following an incident, which occurred sometime in September of 2009, whereby Petitioner took it upon herself to place certain items of furniture in her classroom after the principal of the School had the furniture removed. In a letter dated September 30, 2009, the principal wrote to Petitioner, deeming her actions the result of "poor professional judgment". After the furniture incident, on or about October 28, 2009, the principal conducted an evaluation of Petitioner, whereby Petitioner received an unsatisfactory rating, finding that "[d]espite efforts to support [Petitioner] in her professional development and growth, she is unable to provide effective instruction and follow school policies", and recommended that Petitioner's probationary service be discontinued, effective February 26, 2010 (the "Unsatisfactory Rating"). Indeed, the principal gave Petitioner unsatisfactory marks in the following areas: professional attitude and growth; control of class; maintenance of wholesome

classroom atmosphere; planning and preparation of work; skill in adapting instruction to individual needs and capacities; effective use of appropriate methods and techniques; extent of pupil participation in the class and school program; attention to pupil health, safety and general welfare; attention to routine matters; maintenance of good relations with other teachers and with supervisors; and effort to establish and maintain good relationships with parents.

Subsequently, Petitioner applied to Respondents for leave to teach upon being nominated for certain jobs. In 2012, Petitioner applied to the DOE to work for a vendor providing services to the DOE. Petitioner's application was granted clearance from DOE's Office of Personnel Investigation ("OPI"), granting her leave to work for the vendor. In 2015, Petitioner again submitted an application to Respondents to work as a substitute teacher; however, this time working directly for the DOE. OPI again granted Petitioner clearance to work as a substitute teacher for the DOE.

On or about October 3, 2017, Petitioner again applied to Respondents for permission to work as a substitute teacher for the DOE, having been nominated to teach for the 2017 – 2018 school year by several principals. Unlike Petitioner's applications in 2012 and 2015, Petitioner's application and nomination were cancelled. In emails dated October 3, 7 and 13, 2017, Petitioner was informed that the DOE could not proceed with her application because she "either received an Unsatisfactory/Ineffective rating for teaching services in the New York City Public Schools for one or more school years, [she] had a discontinuance of probation, or [she] [was] terminated for cause in a previous position with the [DOE]." Additionally, in emails dated November 10, 2017 and November 28, 2017, Ianniello wrote to Petitioner stating, "[i]nasmuch as you had received an Unsatisfactory rating for prior teaching services, and you have not established a sufficient basis to disregard the Unsatisfactory rating in considering your Substitute Teacher Application, your nomination ... has been cancelled."

Petitioner wrote to Ianniello on October 18, 2017, requesting reconsideration of her October 3, 2017 application and requesting that the Unsatisfactory Rating be rescinded and expurgated. On January 24, 2018, Ianniello responded to Petitioner's request and stated, "[Petitioner's] failure to take the job of a substitute seriously enough to work a minimum of twenty days causes me considerable concern. This, coupled with [Petitioner's] prior discontinuance of probation is the reason for the current denial to return as a substitute teacher."

On January 22, 2018, Petitioner commenced the instant Article 78 proceeding for a judgment finding Respondents acted in an arbitrary and capricious manner and abused their discretion when Respondents decided to cancel Petitioner's application and nomination in 2017. Petitioner is also seeking a judgment ordering Respondents to restore Petitioner to "good standing" such that Petitioner is eligible to be hired and work for the DOE.

Discussion

It is well-settled that in an Article 78 proceeding, the scope of judicial review is limited to the issue of whether the administrative action has a rational basis for its determination. Pell v Board of Educ., 34 NY2d 222, 230-231 (1974). The determination made by Respondents will not be disturbed unless there is no rational basis for the exercise of discretion or it was arbitrary and capricious. Id. at 231. "The arbitrary or capricious test chiefly relates to ... whether the

administrative action is without foundation in fact. Arbitrary action is without sound basis in reason and is generally taken without regard to the facts." Id.

Respondents' decision to cancel Petitioner's 2017 application and nomination was based upon a factual foundation that had a rational basis. As set forth in Ianniello's letter dated January 24, 2018, the decision to cancel Petitioner's application and nomination was based upon: (i) Petitioner's discontinuance of probation; (ii) the Unsatisfactory Rating; and (iii) Petitioner's failure to meet the minimum twenty days of substitute service requirement. These factual foundations demonstrate that Respondents had a rational basis for cancelling Petitioner's nomination.

Petitioner challenges, as arbitrary and capricious and an abuse of discretion, Respondents reliance on Petitioner's discontinuance of probation and the Unsatisfactory Rating when deciding to cancel Petitioner's 2017 application and nomination. Petitioner's evidence is comprised of the records from her previous years of teaching, in particular her satisfactory annual rating from June 15, 2009, and previous years' observation reports, all of which were executed by the principal of the School. Petitioner also includes letters of support from previous employers, parents of students and co-workers. However, Petitioner's argument is undercut by the fact that the evaluations and observations all make reference to the fact that Petitioner needed improvement in the areas found to be unsatisfactory in Petitioner's Unsatisfactory Rating. Specifically, Petitioner's annual rating from June 15, 2009 states "[l]esson planning and delivery, communication with parents and classroom [management] must show evidence of improvement to obtain [satisfactory rating] for next year." Thus, reliance on the Unsatisfactory Rating and Petitioner's discontinuance was not arbitrary and capricious; Respondents reliance had a sound basis, i.e., Petitioner's prior record of employment with the DOE. Furthermore, Respondents correctly assert that to the extent Petitioner is attempting to challenge her probationary discontinuance and Unsatisfactory Rating, those claims are barred by the four-month Statute of Limitations set forth in CPLR 217 and the doctrine of res judicata, as Petitioner previously commenced an action on February 5, 2014, concerning those employment actions, which was dismissed as time-barred on October 3, 2014.

Petitioner further contends that Respondents' reliance on Petitioner's failure to meet the twenty days of substitute service requirement was arbitrary and capricious. In addition, Petitioner alleges that she did in fact meet the requirement by working eleven days for the DOE and thirteen days for the Baldwin Union Free School District; Petitioner notes that the twenty-day requirement does not specifically state that the service must take place in New York City. This argument is undercut by an email dated May 6, 2015, sent by the DOE HR School Support Office to Petitioner, in which the DOE states that Petitioner's payroll records indicate that Petitioner served less than twenty full days as a substitute teacher during the 2014 – 2015 school year. This email makes clear that the twenty-day requirement is based upon substitute services rendered to the DOE, as they utilize payroll records to ascertain whether the requirement has been met.

In this instant proceeding, this Court may not substitute its own judgment for that of an administrative agency "merely because [it is] of the opinion that a better solution could thereby be attained." Peconic Bay Broadcasting Corp. v Board of App., 99 AD2d 773, 774 (2nd Dept

1984). Furthermore, "administrative decisions of educational institutions involve the exercise of highly specialized professional judgment" and thus, courts hold that the institutions are better suited to make decisions concerning internal matters. Mass v Cornell Univ., 94 NY2d 87, 92 (1999). The Court is reluctant to interfere with the reasoning of Respondents and finds that the determination to cancel Petitioner's 2017 application and nomination was made with a sound basis in reason, i.e., Petitioner's discontinuance of probationary service, the Unsatisfactory Rating, and Petitioner's failure to meet the twenty-day substitute service requirement.

Accordingly, the petition is denied.

Conclusion

The Verified Petition is hereby denied, and the Clerk is directed to enter judgment dismissing this Article 78 proceeding.

11/20/2018
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[X] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE